INDEX—10562.

	PAGE
Placita	1
Statement pursuant to Rule 10 (b)	2
Complaint, filed March 1, 1949	3
Answer, filed June 9, 1949	6
Motion for Judgment, filed Oct. 9, 1950	10
Order re: Motion for Judgment, entered Oct. 9, 1950	11
Annuity Policy, filed Aug. 22, 1951	11
Letter to Equitable Life Assurance Society, dated Nov. 1, 1938	16
Life Insurance Policy	17
Memorandum and Order, filed Sept. 25, 1951	33
Motion for Entry of Judgment, filed Oct. 30, 1951	38
Ex. A—Plaintiff's Recomputation of Tax	41
Judgment, entered Nov. 9, 1951	42
Government's Exhibit No. 1, filed Nov. 9, 1951	42
Certificate of Probable Cause, entered Dec. 12, 1951	44
Notice of Appeal, filed Jan. 8, 1952	45
Statement of Points	46
Designation of Record	47
Information re: Appellee	49
Stipulation and Order re: Original Documents	49
Clerk's Certificate	51

Proceedings in U. S. C. A. for the Seventh Circuit	53
Clerk's Certificate	53
Caption	54
Opinion, Lindley, J	55
Dissenting opinion, Duffy, J	58
Judgment	60
Clerk's certificate	61
Order allowing certiorari	63

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TRANSCRIPT OF RECORD ON APPEAL

TO THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

EDWIN J. BOHNEN, Executor of the Estate of MARY A. BOHNEN, and individually; THEODORE G. BOHNEN, and VIRGINIA E. BOHNEN,
Plaintiffs-Appellees,

vs.

CARTER H. HARRISON, individually and as Collector of Internal Revenue,
Defendant-Appellant.

No. 49 C 362

From the United States District Court for the Northern District of Illinois, Eastern Division.

PLEAS had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of November (it being the 5th day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-One and of the Independence of the United States of America the 176th Year.

Present: Honorable John P. Barnes, District Court.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. LaBuy, District Judge.
Honorable J. Sam Perry, District Judge.
Honorable William H. Holly, District Judge.

Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Friday, November 9, 1951.
Court met pursuant to adjournment.
Present: Honorable William J. Campbell, Trial Judge.

1 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

Edwin J. Bohnen, Executor of the Estate of Mary A. Bohnen, and individually; Theodore G. Bohnen and Virginia E. Bohnen,
Plaintiffs,
vs.
Carter H. Harrison, individually and as Collector of Internal Revenue,
Defendant.
No. 49 C 362

STATEMENT REQUIRED BY RULE 10(b) OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, EFFECTIVE AUGUST 1, 1950.

The style of the court and the title of the case are exhibited in the above caption.

March 1, 1949, suit was commenced by filing a complaint.

June 9, 1949, Answer of defendant filed.

October 4, 1949, pre-trial conference held.

October 9, 1950, motion of plaintiffs for judgment on the pleadings.

August 15, 1951, Rule on plaintiffs to file copies of insurance policies referred to in complaint.

August 22, 1951, filed insurance policies pursuant to rule of court of August 15, 1951.

September 25, 1951, entered memorandum and order of court granting plaintiffs' motion for judgment on the pleadings; judgment to enter for plaintiffs. Plaintiffs to submit form of judgment order.

November 9, 1951, hearing before U. S. District Judge William J. Campbell as to the correctness of the computations. Filed defendant's Exhibit No. 1 (computation of Bureau of Internal Revenue). Judgment entered for plaintiffs for $22,427.47 plus interest from December 23, 1944 at 6% as to $12.57, and from September 11, 1944 as to balance.

January 8, 1952, filed notice of appeal.

Otto Kerner, Jr.
Otto Kerner, Jr.,
United States Attorney,
Attorney for Defendant.

2 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption No.—Case No. 49 C 362 • •

Be It Remembered, that on to-wit, the 1st day of March, 1949, the above-entitled action was commenced by the filing of the following Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

3 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption No.—Case No. 49 C 362 • •

Plaintiffs demand a Jury Trial.

COMPLAINT

Plaintiffs, Edwin J. Bohnen, Executor of the Estate of Mary A. Bohnen, and individually, who resides at 720 Locust Street, Winnetka, Illinois, Theodore G. Bohnen, who resides at 67 Tunstall Road, Scarsdale, New York, and Virginia E. Bohnen, who resides at 7641 Phillips Street, Chicago, Illinois, by their attorneys, Edward H. McDermott, William M. Emery, Leonard S. Schmitz, and Jerome H. Burns, state:

1. The Court has jurisdiction of this matter under Title 28, United States Code, Section 1340, and all other laws of the United States in that behalf;

2. Mary A. Bohnen, died testate on June 29, 1942, leaving her estate equally to her three children, the plaintiffs herein;

3. The plaintiffs as heirs and devisees of Mary A. Bohnen, are the sole and absolute owners of the claim
4 herein presented, and have made no assignment of said claim or any part thereof. No other suit or process by the plaintiffs is pending against any other person or against the United States for or in respect of the plaintiffs' claim herein set forth;

4. Edwin J. Bohnen was appointed executor of the estate of Mary A. Bohnen by the Probate Court of Cook

County, Illinois, on July 13, 1942, and acted in that capacity until he was duly discharged on July 23, 1943;

5. An estate tax return for such estate was timely filed with the defendant as Collector as aforesaid and an estate tax of $6,173.25 paid by the executor, Edwin J. Bohnen to the defendant;

6. Thereafter, the Commissioner of Internal Revenue assessed an estate tax deficiency in the amount of $25,497.53 against the estate of Mary A. Bohnen;

7. On August 14, 1944, Carter H. Harrison, the defendant herein, was the Collector of Internal Revenue for the First District of the State of Illinois;

8. On August 14, 1944, Edwin J. Bohnen, executor of the estate of Mary A. Bohnen, paid to Carter H. Harrison, Collector of Internal Revenue, $25,497.53, the amount of the deficiency assessed against the estate of Mary A. Bohnen, and on the same date paid to Carter H. Harrison, Collector of Internal Revenue, $1,393.38, as interest on such deficiency;

9. On October 4, 1945, Edwin J. Bohnen, executor of the estate of Mary A. Bohnen, filed a claim for refund
5 for $26,890.91, the amount of the above $25,497.53 deficiency and $1,393.38 interest, with the Collector of Internal Revenue for the First District of the State of Illinois;

10. The Commissioner of Internal Revenue, by letter sent from Washington, D. C., dated March 3, 1947, denied in full such claim for refund;

11. In 1935, after receiving assurances from their mother that she was making gifts to them, plaintiffs, in their own names, applied to The Equitable Life Assurance Society of the United States, a corporation, for a policy of insurance on the life of their mother. The insurance company required that an annuity contract be purchased before it would issue the life insurance policy. On October 25, 1935, The Equitable Life Assurance Society of the United States issued an annuity contract to Mary A. Bohnen, and on the same date issued to plaintiffs a single premium life insurance policy in the face amount of $72,000 on the life of Mary A. Bohnen. By the terms of the policy, the plaintiffs were the "Owners" with all rights in the policy vested in them, or their descendants. At the request of the plaintiffs, their mother's gift in the amount of $53,717.04, was paid directly to The Equitable Life Assurance Society of the United States by Mary A. Bohnen,

rather than by formal transfer to the plaintiffs first, and then in turn through transfer by them of the premium cost to the insurance company;

12. Mary A. Bohnen filed a timely gift tax return for the year 1935, including among other gifts, the gift of
6 $53,717.04 used by the plaintiffs in purchasing the above life insurance policy;

13. The Commissioner of Internal Revenue erroneously included the proceeds of the above life insurance policy, $72,094.81, in the gross estate of Mary A. Bohnen. The basis for such inclusion, and for denial of the claim for refund, by the Commissioner of Internal Revenue, was that the life insurance and annuity were one transaction and constituted a transfer intended to take effect in possession or enjoyment at her death, or under which she reserved the income for her life, within the provisions of Section 811(c) of the Internal Revenue Code;

14. The collection, by Carter H. Harrison, Collector of Internal Revenue, of the tax and interest pertaining to the inclusion in the gross estate of Mary A. Bohnen of the proceeds of the above life insurance policy was erroneous and illegal. Mary A. Bohnen, with regard to the above insurance policy, made no transfer, within the provisions of Section 811(c) of the Internal Revenue Code, intended to take effect in possession or enjoyment at her death, or under which she reserved the income for her life;

Wherefor, Plaintiffs demand judgment against the Defendant, individually and as Collector as aforesaid, in the sum of $21,692.14, or for such other amount as may be legally payable as a result of the erroneous inclusion of the proceeds of the above life insurance policy in the gross estate of Mary A. Bohnen, together with interest com-
7 puted thereon from the date of overpayment.

In addition, plaintiffs have incurred attorneys fees in connection with the matter herein which constitute a legitimate deduction from the gross estate of Mary A. Bohnen. The exact amount of such fees must await the termination of this matter;

Wherefor, Plaintiffs demand judgment against the Defendant, individually and as Collector as aforesaid, for the amount of tax together with interest thereon resulting from the deduction from the gross estate of Mary A. Bohnon of the attorney fees incurred herein.

Leonard S. Schmitz
Leonard S. Schmitz

Jerome H. Burns
Jerome H. Burns

Edward H. McDermott
William M. Emery
Leonard S. Schmitz
Jerome H. Burns

111 West Monroe Street
Chicago 3, Illinois
Telephone: Franklin 2-2002

Attorneys for Plaintiffs

8 And afterwards on, to wit, the 9th day of June, 1949 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Answer in words and figures following, to wit:

9 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * Caption No.—Case No. 49 C 362 * *

ANSWER

Defendant answers as follows:

I.

Admits the allegations contained in paragraph 1 of the complaint.

II.

Admits the allegations contained in paragraph 2 of the complaint.

III.

Admits the allegations contained in paragraph 3 of the complaint.

IV.

Admits the allegations contained in paragraph 4 of the complaint.

V.

Admits the allegations contained in paragraph 5 of the complaint.

VI.

Admits the allegations contained in paragraph 6 of the complaint.

VII.

Admits the allegations contained in paragraph 7 of the complaint.

VIII.

Denies all the allegations contained in paragraph 8 of the complaint, except admits or avers that the deficiency in federal estate taxes of $25,497.53 plus interest thereon in the sum of $1,456.85, or a total of $26,954.38, was paid as follows: On September 11, 1944, there was paid $26,941.81 and on December 23, 1944, there was paid $12.57.

IX.

Admits the allegations contained in paragraph 9 of the complaint.

X.

Admits the allegations contained in paragraph 10 of the complaint.

XI.

Denies all the allegations contained in paragraph 11 of the complaint, except admits or avers that on or about October 14, 1935, the Equitable Life Assurance Society of the United States issued a single premium so-called life insurance policy in the face amount of $72,000 on the life of Mary A. Bohnen, policy No. 9896003, and on the same date and in connection therewith the Equitable Life Assurance Society of the United States issued to Mary A. Bohnen a life annuity contract No. 9896002; that the annuity con-
11 tract provided for an annual payment to Mary A. Bohnen of $1,618.03 beginning on October 14, 1935. Defendant is informed and believes and upon such information and belief avers that Mary A. Bohnen, decedent herein, paid on or about October 14, 1935, a single premium of $53,717.04 to the Equitable Life Assurance Society of the United States for the so-called life insurance policy, and on the same date Mary A. Bohnen, decedent herein, paid to the Equitable Life Assurance Society of the United States a premium on the annuity contract of $22,602.96; defendant admits that the insurance company required that the annuity contract be purchased before the company would issue

the so-called life insurance policy, and avers that said contracts were issued, without decedent having taken a physical examination; defendant further avers that the so-called life insurance policy was in the nature of an investment as distinguished from life insurance and was, therefore, taxable in decedent's estate under the provisions of Section 811 (c) of the Internal Revenue Code as a transfer by decedent during her lifetime under which decedent retained for her life the right to the income from the property transferred.

XII.

Denies all the allegations contained in paragraph 12 of the complaint, except defendant admits or avers that Mary A. Bohnen, decedent herein, filed an amended gift tax return, signed and sworn to by her on May 15, 1936, with the Collector of Internal Revenue for the First District of Illinois on or about May 25, 1936, in which decedent reported gifts during the calendar year 1935 to Theodore G. Bohnen, Edwin J. Bohnen, decedent's sons, and Virginia E. Bohnen, decedent's daughter, included in which was a gift to each of the donees in words and figures quoted from the return as follows: "⅓ Int. in single pay't Life Ins. Policy 10/14/35 * * * All gifts for love and affection"; defendant avers that on or abqut the same date Edwin J. Bohnen and Virginia E. Bohnen filed with the Collector of Internal Revenue for the First District of Illinois, amended donee's information returns of gifts for the calendar year 1935 duly executed by said donees, each of which return contains the following:

12

> ⅓ interest in single prem. Life Ins. Policy 10/14/35 * * *
>
> I hereby give notice of the herein-described property received from the above-named donor [Mrs. Mary A. Bohnen], and certify that all the information given herein is correct, to the best of my knowledge and belief.

Defendant further alleges that a federal estate tax return was filed with the Collector of Internal Revenue for the First District of Illinois, on behalf of the estate of Mary A. Bohnen, deceased, by Edwin J. Bohnen as executor on or about July 1, 1943, which return, duly executed under oath by Edwin J. Bohnen, contained, under Schedule D thereof, the following:

Single payment life policy absolute owner form No. 9896003 of Equitable Life Assurance Society, Theodore G. Bohnen, Edwin J. Bohnen and Virginia E. Bohnen equal owners and beneficiaries. See form 12 attached. On 10/14/35, as shown in gift tax return referred to in Schedule G herein, decedent gave this policy to Theodore G. Bohnen, Edwin J. Bohnen and Virginia E. Bohnen in equal shares.

XIII.

Admits the allegations contained in paragraph 13 of the complaint, except denies that the proceeds of the so-called life insurance policy was erroneously included in the taxable estate of Mary A. Bohnen, deceased, and avers that the proceeds of the contract were properly included in decedents taxable estate under Section 811 (c) of the Internal Revenue Code.

13

XIV.

Denies all the allegations contained in paragraph 14 of the complaint.

Wherefore, having fully answered, defendant prays judgment and costs.

Otto Kerner, Jr.,
United States Attorney.

14

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * Caption No.—Case No. 49 C 362 * *

AFFIDAVIT OF SERVICE

State of Illinois }
County of Cook } ss

LeRoy R. Krein, being first duly sworn, on oath deposes and says that he is an Assistant United States Attorney for the Northern District of Illinois; that on the 9th day of June, 1949, he mailed a copy of the foregoing Answer to Jerome H. Burns, Esquire, 111 West Monroe Street, Chicago, Illinois, one of the attorneys for the above-named plaintiffs.

LeRoy R. Krein

Subscribed and sworn to before
me this 9th day of June, A. D. 1949.
Ruth J. Quinlan
Notary Public

15 And afterwards on, to wit, the 9th day of October, 1950 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Motion for Judgment on the Pleadings in words and figures following, to wit:

16 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • Caption No.—Case No. 49 C 362 • •

MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiffs, by their attorneys, move the court for judgment on the pleadings under Rule 12 (c) of the Rules of Civil Procedure for the District Courts of the United States, in favor of the plaintiffs for their entire claim, and in support of the filing of this motion at this time, state as follows:

1. That the complaint and answer herein raise substantial questions of fact and that both the defendant and the plaintiffs have filed trial briefs upon the assumption that the determination of this cause depends solely upon determination of the controverted factual questions.

2. That in doing further legal research in preparation for trial, plaintiffs' attorneys have concluded that the government's position is unfounded in law, irrespective of the manner in which the controversies of fact raised by the pleadings may be decided.

3. That plaintiffs and their attorneys believe that the filing of the present motion will be to the best interests of all parties and of the court, and will, if decided in favor
17 of the plaintiffs, relieve the court of the necessity of a trial of the facts.

McDermott, Will & Emery
George S. Stansell
James A. Dunkin
Attorneys for Plaintiffs

McDermott, Will & Emery
111 West Monroe Street
Chicago 3, Illinois
Franklin 2-2002

18 And on the same day, to wit, on the 9th day of October, 1950, being one of the days of the regular

October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

19 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * Caption No.—Case No. 49 C 362 * *

ORDER

This matter coming on to be heard on motion of the plaintiffs' attorneys, due notice having been served upon defendant through his attorneys,

It Is Ordered as follows:

1. That leave be given to plaintiffs to file at this time a motion for judgment in the pleadings, pursuant to rule 12 (c) of the Rules of Civil Procedure for the United States District Courts.

2. That the time of plaintiffs to file their brief in support of said motion, pursuant to rule 7 of the Rules of Practice of this court, shall be extended until ten (10) days from date of this order.

3. That leave is given to plaintiffs to withdraw their trial brief heretofore filed with respect to said cause, with leave to file an amended trial brief in the event the court ultimately denies their said motion for judgment on the pleadings.

20 4. That leave is granted McDermott, Will & Emery, George S. Stansell, and James A. Dunkin to file their appearances as additional counsel for the plaintiffs.

Enter:

John P. Barnes
Judge

Dated: October 9, 1950.

21 And afterwards on, to wit, the 22nd day of August, 1951 there were filed in the Clerk's office of said Court a certain Annuity Policy and Life Insurance Policy Issued By Equitable Life Assurance Society of United States, in words and figures following, to wit:

22 McDERMOTT, WILL & EMERY
111 West Monroe Street
Chicago 3
August 22, 1951

Mr. Roy H. Johnson, Clerk
United States District Court
Room 726, United States Court House
Chicago 3, Illinois
Dear Sir:

Pursuant to the order entered on August 15th by Judge Campbell in the case entitled Edwin J. Bohnen, et al *vs.* Carter H. Harrison, No. 49 C 362, I enclose one copy each of the annuity policy and of the life insurance policy issued by the Equitable Life Assurance Society of the United States on October 25, 1935 in which Mary A. Bohnen is the annuitant and the insured, respectively. These are the policies referred to in the Complaint filed in this case.

Yours respectfully,
James A. Dunkin

JAD/dg
Enclosures
cc Otto Kerner, Jr.,
United States Attorney
23 Copy

Policy No. 9,896,002

THE EQUITABLE
LIFE ASSURANCE SOCIETY
OF THE UNITED STATES

A Mutual Company Organized July 26, 1859
Hereby Agrees To Pay
An Annuity
To —Mary A. Bohnen—
(Herein called the annuitant)
subject to the conditions hereinafter stated,
in annual payments

of —Sixteen Hundred Eighteen and 03/100—Dollars each.

The first annual annuity payment shall be due on the fifteenth day of October, nineteen hundred and thirty-six, if the annuitant is then living. Subsequent payments shall be due annually thereafter during the life time of the annuitant, terminating with the last payment preceding the death of the annuitant. In event of the death of the annui-

tant prior to the due date of the first annuity payment, no annuity payment shall be made under this contract, nor shall the Society refund the consideration paid for this contract or any part thereof.

This contract is issued in consideration of the payment to the Society of Twenty-Two Thousand Six Hundred Two And 96/100 Dollars.

The provisions of the subsequent pages hereof form a part of this contract as fully as if recited at length over the signatures hereto affixed. This contract is executed at the Home Office of the Society in New York on its date of issue, the twenty-fifth day of October, 1935.

Examined by
O.W.
Thomas T. Parkinson President.

Alexander McNeill Secretary
24 Copy

Annuity Application

TO THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

Application is hereby made for a Life Annuity providing for Annual payments of $1,618.03 each, with a Single premium of $22,602.96 payable in advance.

The premium has been paid on the 14th day of October, 1935.

Annuitant upon whose life Annuity is to depend } Mary A. Bohnen Female

Widowed Mary A. Neckerman (Maiden name)

Who resides at 6817 Bennett Avenue, Chicago, Cook County, Illinois.
Whose occupation is Housewife.
Who was born at Chicago, Cook County, Illinois, on the 14th day of December, 1873, and whose age at last birthday was therefore 61 years.

Annuity to be payable } to Mary A. Bohnen

Residing at 6817 Bennett Avenue, Chicago, Cook County, Ill.

Dated at Chicago, Illinois, October 14th, 1935.

Mary A. Bohnen
Soliciting Agent
Courtenay Barber
Agency

25 Copy

Participation in Dividends. The proportion of divisible surplus accruing upon this contract shall be ascertained annually. At each anniversary of the Register date of this contract, if an Annuity payment be then due, or, if no Annuity payment be then due, at the Annuity payment due date next following such anniversary, any surplus apportioned by the Society to this contract as a Dividend shall be paid to the person entitled to receive the Annuity payment then due. Dividends will cease with the last Dividend due as above prior to the death of the Annuitant, and no Dividend will be allowed for the period elapsed since the last Dividend due date preceding the Annuitant's death.

Method of Payment. The Society will make each Annuity payment by check. Evidence satisfactory to the Society of the survival of the Annuitant on the due date of each Annuity payment must be furnished; where the check for such payment is drawn to the order of the Annuitant, the Annuitant's personal endorsement thereon will be accepted as evidence of such survival.

Incontestability and Freedom of Travel, Residence and Occupation. This contract shall be (a) incontestable after it has been in force for a period of one year from its date of issue, and (b) free from restrictions on travel, residence, occupation or military or naval service.

Assignments. No assignment of this contract shall be binding upon the Society or be deemed to be in force unless in writing and until filed at its Home Office. The Society assumes no responsibility for the validity of any assignment.

Age. If the age of the Annuitant has been misstated, the benefits hereunder shall be adjusted in amount to correspond with the benefits for the Annuitant's correct age at the rates charged by the Society at the Register date of this contract. Overpayments, if any, by the Society, shall, with interest at the rate of six per cent. (6%) per annum, be charged against any benefits falling due after adjustment.

Basis of Reserve. The reserve for which funds are to be

held upon this contract shall be not less than that computed upon the Combined Annuity Tables with interest at 3%.

The Contract. This contract, and the application therefor, a copy of which is endorsed hereon or securely attached hereto, constitute the entire contract between the parties. All statements made by the Annuitant or Purchaser shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this contract or be used in defense of a claim hereunder unless contained in the written application therefor and a copy of such application is endorsed hereon or attached hereto, when issued.

No person except the President, a Vice-President, the Secretary, the Treasurer, a Registrar or an Assistant Registrar of the Society has power to modify this contract.

All sums payable by the Society under this contract shall be payable at its Home Office in the City of New York.

ATTACH TO APPLICATION
NOV 28 1938

Equitable Life Assurance Society
393 Seventh Avenue
New York, N.Y.

Gentlemen:

We, EDWIN J. BOHNEN, THEODORE G. BOHNEN and VIRGINIA E. BOHNEN, the joint Owners of policy No. 9,896,008 issued on the life of Mary A. Bohnen, hereby request that the dividend for the year 1939 and all subsequent dividends under said policy, be paid in cash and that the checks in payment of such dividends be drawn to the order of said VIRGINIA E. BOHNEN alone.

ELECTION NOTED
ON RECORD IN OFFICE.
38
38 N.Y.S.

This election is to remain in force until revoked by us jointly in writing.

Edwin J. Bohnen
Witness — Edwin J. Bohnen

Theodore G. Bohnen
Witness — Theodore G. Bohnen

Virginia E. Bohnen
Witness — Virginia E. Bohnen

Signatures OK.
38
38.11.25

Dated November 1938

ATTACH TO APPLICATION
NOV 28 1938

NOTED ON DIVIDEND CARD
NOV 25 1938
38

Draw dividend checks to the order of Virginia E. Bohnen, alone per owners' request dated 38 11

THE EQUITABLE
LIFE ASSURANCE SOCIETY OF THE UNITED STATES

A MUTUAL COMPANY — ORGANIZED JULY 26, 1859

HEREBY INSURES THE LIFE OF

— MARY A. BOHNEN —
(HEREIN CALLED THE OWNER)

And agrees to pay

— SEVENTY-TWO THOUSAND — Dollars,
(HEREIN CALLED THE FACE AMOUNT)

to the Special Beneficiaries as named in Special Provision attached hereto, dated October 25, 1935, and in accordance therewith
(herein called the special beneficiary, with the right to the Owner to change the special beneficiary or assign this policy)

upon receipt of due proof of the death of the Insured, provided this policy is then in force and is then surrendered properly released.

This insurance is granted in consideration of the payment to the Society of a single premium of

Fifty-three thousand seven hundred seventeen and 04/100 Dollars.

THE PROVISIONS of the subsequent pages hereof form a part of this contract as fully as if recited at length over the signatures hereto affixed. This policy is executed at the Home Office of the Society in New York on its date of issue, the Twenty-fifth day of October, 19 35.

Secretary. President.

Asst Registrar.

No. 2057. 35. 1.
Single Prem. Life.

INSURANCE PAYABLE AT DEATH. SINGLE PREMIUM. ANNUAL DIVIDENDS.

(Entries on this page are to be made only by the Society at its Home Office in New York. No other entries will be recognized.)

OWNER. The rights conferred upon the Owner by the terms of this policy shall be vested in the Insured's children, EDWIN J. BOHMEN, THEODORE G. BOHMEN, and VIRGINIA E. BOHMEN, jointly during their lifetime. Upon the death of any one of the Insured's said children, such rights shall be vested in the survivors of them, jointly during their lifetime, or if only one of them be surviving, such rights shall be vested in the survivor of them during his or her lifetime. Upon the death of the last survivor of the Insured's said children, such rights shall be vested in the executors or administrators of the last survivor of the Insured's said children.

A person while thus vested with the rights of Owner may, prior to the death of the Insured, exercise the rights conferred upon the Owner by the terms of this policy without the consent of the Insured or any special beneficiary.

Asst. Registrar

SPECIAL
CHANGE OF BENEFICIARY REGISTER.

DATE ENDORSED	SPECIAL BENEFICIARY	ENDORSED BY

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

Attached to and made part of Policy No. 9,896,003 *on the life of* --- MARY A. BOHMEN ---, *the Insured.*

SPECIAL PROVISION:

1. It is hereby specially provided that settlement of the amount becoming due by reason of the death of the Insured shall be made with the Insured's children, EDWIN J. BOHMEN, THEODORE G. BOHMEN and VIRGINIA E. BOHMEN, in equal shares, survivors or survivor, as provided in paragraph 2, should none survive, with the children of the Insured's said children, in equal shares, survivors or survivor, as provided in paragraph 3, should none survive, in a single sum with the executors or administrators of the last survivor of the Insured's said children.

2. The share becoming due to each said child of the Insured under paragraph 1 shall be left on deposit with the Society in accordance with Option 1 of the Optional Modes of Settlement during his or her lifetime, interest payable monthly, except that such child shall have the following privilege:

   (a) at any time of having such share then held under said Option 1, together with any interest accrued thereon, paid in accordance with Option 2 of the said Optional Modes of Settlement over a period of not less than TEN YEARS; or

   (b) at any time of having such share then held under said Option 1, together with any interest accrued thereon, paid as a Life Income in accordance with Option 3 of the said Optional Modes of Settlement.

A. Should any of the Insured's said children elect settlement in accordance with said Option 2 or 3 and die, subsequent to the death of the Insured, any instalments of such share under said Option 2, or any CERTAIN instalments of such share under said Option 3, as the case may be, remaining unpaid at his or her death, shall be paid as each instalment shall become due in equal shares to the survivors or survivor of the Insured's said children, should neither survive, to the children of the Insured's said children, in equal shares, survivors or survivor. Any instalments under said Option 2, or any CERTAIN instalments under said Option 3, as the case may be, remaining unpaid at the death of the last survivor of the Insured's said children and the children of the Insured's said children, subsequent to the death of the Insured, shall be commuted and paid in a single sum to such last survivor's executors or administrators.

B. In the event of the death of any of the Insured's said children, subsequent to the death of the Insured, settlement of such share then remaining under said Option 1, together with any interest accrued thereon, shall be made in equal shares, with the survivors or survivor of the Insured's said children as herein provided. Settlement of the amount then remaining under said Option 1, together with any interest accrued thereon, at the death of the last survivor of the Insured's said children, subsequent to the death of the Insured, shall be made with the children of the Insured's said

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THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

Attached to and made part of Policy No. 9,898,003 *on the life of* --- MARY A. BOHNEN ---, *the Insured.*

-2-

children, in equal shares, survivors or survivor, as provided in paragraph 3, should none survive, in a single sum with such last survivor's executors or administrators.

3. The share becoming due to each child of the Insured's said children under paragraph 1 or 2-B shall be left on deposit with the Society in accordance with said Option 1 for a period not to exceed TWENTY-ONE YEARS after the death of the last survivor of the Insured and the Insured's said children, interest payable monthly, except that such child shall have the privilege upon the date on which he or she shall have attained the age of TWENTY-ONE YEARS or on any interest due date thereafter of withdrawing all of the share then held on deposit or any part thereof, but no partial withdrawal, other than a final withdrawal of any balance of the share then remaining on deposit, may be made for less than FIVE HUNDRED DOLLARS. Upon the expiration of the said period of TWENTY-ONE YEARS, such share then held under said Option 1, together with any interest accrued thereon, shall be paid in a single sum to such child.

In the event of the death of any child of the Insured's said children, subsequent to the death of the Insured and the Insured's said children, settlement of such share then remaining under said Option 1, together with any interest accrued thereon, shall be made in equal shares with the survivors or survivor of the children of the Insured's said children as herein provided. Any amount remaining under said Option 1, together with any interest accrued thereon, at the death of the last survivor of the children of the Insured's said children, subsequent to the death of the Insured and the Insured's said children, shall be paid in a single sum to such last survivor's executors or administrators.

New York, October 25, 1935.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES.

HM

Asst. Secretary

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

Attached to and made part of Policy No. 9,696,003 *at the request of* EDWIN J. BOBBIEN, THEODORE G. BOBBIEN and VIRGINIA E. BOBBIEN, *the Owner.*

OPTIONAL MODES OF SETTLEMENT.

The Owner may elect (with the right to revoke or to change such election before the maturity of said policy) to have the net sum becoming due to any special beneficiary under said policy applied under one, or subject to the Society's approval more than one, of the following optional modes of settlement in lieu of a single sum settlement. In the absence of such an election by the Owner, the special beneficiary, after such net sum becomes due, may so elect. The special beneficiary, after such net sum becomes due, may designate (with the right to change such designation) a person or persons to receive any amount which in the absence of such a designation would become payable to the special beneficiary's executors or administrators. Such election, revocation, designation or request for change shall be in writing and shall not take effect until filed with the Society at its Home Office and endorsed upon the policy or the supplementary contract, if any.

1. DEPOSIT OPTION: Left on deposit with the Society at interest guaranteed at the rate of 3½ per annum, with such Excess Interest Dividend as may be apportioned.
2. INSTALMENT OPTION: FIXED PERIOD. Paid in a fixed number of equal annual, semi-annual, quarterly or monthly instalments as set forth in the table on the back hereof.
3. LIFE INCOME OPTION: Paid in equal annual, semi-annual, quarterly or monthly instalments as set forth in the table on the back hereof for life, ten or twenty years certain as may be elected and continuing during the remaining lifetime of the person upon whose life the Income depends. The amount of each instalment shall be based on such person's sex and age at birthday nearest the due date of the first instalment.
4. INSTALMENT OPTION: FIXED AMOUNT. Paid in equal annual, semi-annual, quarterly or monthly instalments of such amount as may be agreed upon until the net sum due under said policy together with interest on the unpaid balance at the rate of 3½ per annum, and such Excess Interest Dividends as may be apportioned, shall be exhausted, the final payment to be for the balance then remaining with the Society. If the interest and Excess Interest Dividend for any year shall be in excess of the instalments payable in such year, then the total amount of the instalments for the subsequent year shall be increased by the amount of such excess.

EXCESS INTEREST DIVIDENDS: The foregoing Options are based upon an interest earning of 3½ per annum; but if in any year the Society declares that funds held under such Options shall receive interest in excess of 3½ per annum, the interest under Option 1, the amount of instalment under Option 2, the amount of income during the fixed period of five, ten or twenty years under Option 3 and the funds held under Option 4, shall be increased for that year by an Excess Interest Dividend at Accumulated and apportioned by the Society.

The foregoing optional modes of settlement may not be elected if at the time of such election the amount to be applied under said policy and under any other policy or policies of this Society on the life of the Insured and payable in the same manner and to the same person, shall in the aggregate be less than $1000. If the fractional year's instalments or interest payments to any payee would amount to less than $10 each, the Society reserves the right to pay at such intervals as will make the payments amount to at least $10 each.

No option of settlement elected by the Owner hereunder can be changed nor can any payment thereunder be commuted, except by the Owner's written order filed with the Society at its Home Office before the maturity of said policy. The right of commutation under Option 3 shall in any event extend only to the instalments for the period certain. The Society reserves the right to defer the payment of any amount which after being applied under these optional modes of settlement is withdrawn upon subsequent election, for a period not exceeding six months after receipt of application therefor.

Under Options 2, 3 and 4, the first instalment will be due upon the date as of which the Option becomes operative.

If Option 3 be elected the Society will require satisfactory evidence of the age of the person upon whose life the Income depends. After the expiration of the period certain, instalments under Option 3 will continue during the lifetime of such person, terminating with the last instalment due prior to the death of such person.

The Society will make each payment under the above Options by check which will require the personal endorsement of the payee as proof of survival. If any payment depends upon the survival of any person other than the payee, evidence satisfactory to the Society of the survival of such person on the due date of such payment must be furnished.

None of the Options shall be available to an assignee. The Options shall be available only if there is a personal special beneficiary, i.e., other than a corporation, firm, trustee, etc.

New York, October 25, 1935

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

W. Alexander, Secretary. Thomas I. Parkinson, President.

TABLE OF INSTALMENTS UNDER OPTIONAL MODES OF SETTLEMENT FOR EACH $1,000 OF PROCEEDS.

The semi-annual and quarterly instalments are 50.37% and 25.28% respectively of the annual instalment under Option 2, and not less than these respective percentages under Option 3.

OPTION 2

Number of Years of Instalments	Monthly Instalment	Annual Instalment	Number of Years of Instalments	Monthly Instalment	Annual Instalment	Number of Years of Instalments	Monthly Instalment	Annual Instalment	Number of Years of Instalments	Monthly Instalment	Annual Instalment	Number of Years of Instalments	Monthly Instalment	Annual Instalment
2	$42.86	$507.39	8	$11.66	$138.30	14	$7.26	$85.94	20	$5.51	$65.25	26	$4.59	$54.30
3	28.09	343.23	9	10.33	124.69	15	6.87	81.32	21	5.32	63.08	27	4.47	53.07
4	22.06	261.19	10	9.31	113.51	16	6.53	77.26	22	5.15	60.91	28	4.37	51.74
5	17.91	211.99	11	8.49	104.92	17	6.23	73.74	23	4.99	59.04	29	4.27	50.59
6	15.14	179.22	12	8.24	97.53	18	5.96	70.59	24	4.84	57.32	30	4.18	49.53
7	13.16	155.83	13	7.71	91.29	19	5.73	67.78	25	4.71	55.78			

OPTION 3—LIFE INCOME

Age of Person upon Whose Life the Income Depends		5 Years Certain		10 Years Certain		20 Years Certain		Age of Person upon Whose Life the Income Depends		5 Years Certain		10 Years Certain		20 Years Certain	
MALE	FEMALE	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment	MALE	FEMALE	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment
..	10	$3.15	$37.21	$3.14	$37.10	$3.11	$36.72	46	50	$4.02	$47.54	$4.02	$46.68	$4.47	$52.58
..	11	3.17	37.38	3.16	37.28	3.13	36.90	47	51	3.93	46.68	4.01	47.36	4.42	52.23
..	12	3.19	37.58	3.18	37.48	3.14	37.09	48	52	3.83	45.69	4.01	46.62	4.34	51.69
..	13	3.21	37.80	3.20	37.70	3.16	37.20	49	53	3.73	44.68	3.99	46.37	4.24	51.03
10	14	3.23	38.05	3.22	37.94	3.18	37.32	50	54	3.64	43.68	3.97	46.07	4.09	50.19
11	15	3.25	38.31	3.24	38.20	3.20	37.76	51	55	3.46	43.71	3.90	45.97	4.75	55.85
12	16	3.27	38.59	3.26	38.47	3.22	38.00	52	56	3.52	42.13	3.41	43.30	4.60	54.50
13	17	3.30	38.88	3.29	38.74	3.24	38.25	53	57	3.72	44.63	3.82	44.89	4.44	52.15
14	18	3.32	39.15	3.31	39.02	3.26	38.50	54	58	3.92	46.19	3.84	45.98	4.31	50.78
15	19	3.35	39.43	3.33	39.28	3.29	38.78	55	59	4.00	48.04	3.76	47.31	4.24	49.41
16	20	3.37	39.71	3.36	39.56	3.31	39.01	56	60	4.15	71.87	5.88	69.74	5.01	59.03
17	21	3.40	40.01	3.38	39.86	3.33	39.26	57	61	6.31	73.38	6.01	70.22	5.08	59.61
18	22	3.42	40.32	3.41	40.16	3.35	39.50	58	62	6.48	75.28	6.14	71.75	5.11	60.13
19	23	3.45	40.64	3.43	40.48	3.38	39.85	59	63	6.65	77.28	6.28	73.32	5.15	60.72
20	24	3.48	40.98	3.46	40.80	3.41	40.15	60	64	6.84	79.38	6.42	74.84	5.19	61.34
21	25	3.51	41.32	3.49	41.15	3.43	40.46	61	65	7.03	81.58	6.56	76.39	5.23	61.73
22	26	3.54	41.69	3.52	41.50	3.46	40.79	62	66	7.24	83.88	6.71	78.02	5.27	62.18
23	27	3.57	42.07	3.56	41.88	3.49	41.12	63	67	7.45	86.30	6.85	79.62	5.31	62.72
24	28	3.61	42.47	3.59	42.26	3.52	41.47	64	68	7.67	88.83	7.01	81.78	5.34	63.08
25	29	3.64	42.86	3.62	42.67	3.55	41.83	65	69	7.91	91.48	7.15	83.57	5.38	63.58
26	30	3.68	43.31	3.66	43.09	3.58	42.20	66	70	8.15	94.22	7.31	85.38	5.39	63.68
27	31	3.72	43.78	3.70	43.52	3.61	42.59	67	71	8.41	97.13	7.47	87.19	5.41	63.94
28	32	3.76	44.23	3.74	43.98	3.65	42.98	68	72	8.68	100.17	7.62	89.01	5.43	64.19
29	33	3.80	44.72	3.78	44.46	3.68	43.40	69	73	8.95	103.33	7.77	90.83	5.43	64.40
30	34	3.85	45.24	3.82	44.96	3.72	43.82	70	74	9.24	106.61	7.90	92.63	5.44	64.56
31	35	3.89	45.77	3.87	45.47	3.76	44.26	71	75	9.55	110.03	8.07	94.41	5.47	64.72
32	36	3.94	46.32	3.91	46.01	3.80	44.72	72	76	9.88	113.59	8.22	96.13	5.48	64.88
33	37	3.99	46.91	3.96	46.59	3.84	45.19	73	77	10.16	117.23	8.36	97.84	5.49	64.96
34	38	4.05	47.53	4.01	47.16	3.89	45.67	74	78	10.52	121.03	8.49	99.43	5.50	65.04
35	39	4.10	48.17	4.07	47.78	3.92	46.17	75	79	10.86	124.99	8.62	101.03	5.50	65.10
36	40	4.16	48.84	4.12	48.43	3.97	46.69	76	80	11.21	129.04	8.75	102.54	5.50	65.10
37	41	4.22	49.54	4.18	49.08	4.01	47.22	77	81	11.57	133.04	8.88	103.98	5.50	65.10
38	42	4.29	50.27	4.24	49.78	4.05	47.76	78	82	11.94	137.26	8.98	105.27	5.50	65.10
39	43	4.35	51.04	4.30	50.51	4.11	48.33	79	83	12.31	141.63	9.05	105.48	5.50	65.10
40	44	4.42	51.84	4.37	51.26	4.16	48.89	80	84	12.68	145.86	9.15	107.80	5.50	65.10
41	45	4.50	52.69	4.44	52.05	4.21	49.48	81	85	13.05	150.23	9.23	108.80	5.50	65.10
42	46	4.57	53.57	4.51	52.88	4.26	50.07	82	..	13.43	154.61	9.30	109.59	5.50	65.10
43	47	4.65	54.49	4.58	53.74	4.31	50.68	83	..	13.80	158.97	9.36	110.29	5.50	65.10
44	48	4.74	55.46	4.66	54.64	4.36	51.31	84	..	14.17	163.31	9.41	110.97	5.50	65.10
45	49	4.83	56.48	4.74	55.57	4.42	51.94	85 and over	..	14.52	167.57	9.45	111.56	5.50	65.10

INCONTESTABILITY AND FREEDOM OF TRAVEL, RESIDENCE AND OCCUPATION.

This policy shall be (a) INCONTESTABLE after it has been in force during the lifetime of the Insured for a period of two years from its date of issue, and (b) FREE FROM RESTRICTIONS on travel, residence, occupation or military or naval service.

PARTICIPATION IN DIVIDENDS.

The proportion of divisible surplus accruing upon this policy shall be ascertained annually. At the end of the first and each subsequent policy year any surplus apportioned by the Society to this policy as a Dividend shall, at the option of the Owner, be:

1. Paid in cash; or
2. Applied to the purchase of paid-up additional insurance (herein called Dividend Additions), and the Owner may at any time surrender such Dividend Additions and subject to the provision entitled "Deferment" on the fifth page hereof receive the cash value thereof which shall not be less than the original cash Dividend; or
3. Left to accumulate at 3% interest, compounded annually, and if in any year the Society declares that funds held under this Option shall receive interest in excess of 3% per annum the accumulation hereunder shall be increased by an Excess Interest Dividend in an amount to be determined and apportioned by the Society. Any accumulations under this Option (herein called Dividend Accumulations) will be payable to the Owner on demand on any anniversary of the Register date of this policy.

If the Owner does not elect one of the foregoing Options within three months after the mailing by the Society of a notice requiring such election, the Dividend shall be applied as provided under Option 2. If the Insured dies after the first policy year and while this policy is in force, such cash dividend as may be apportioned by the Society for the fraction of the then current policy year elapsed before such death will be allowed.

Any Dividend and any Dividend Additions or Dividend Accumulations remaining unpaid at the maturity of this policy shall be payable together with the face amount hereof to the same person or persons and in the same manner as the face amount hereof unless otherwise provided herein.

PAYMENT AS MATURED ENDOWMENT. Whenever during the lifetime of the Insured the reserve on this policy and on any Dividend Additions together with any Dividend Accumulations hereunder equals or exceeds the face amount hereof, the Society, upon surrender of this policy with due release, will regard this policy as a matured Endowment and will pay to the Owner the face amount of insurance hereunder less any indebtedness, together with any Dividend or Dividend Accumulations and the cash value of any Dividend Additions not required to provide such face amount.

RE-ISSUE TO INSURED. Upon the written request of the Insured, accompanied by this policy and an assignment satisfactory to the Society of all rights and interests hereunder to the Insured, this policy if in force will be rewritten (without medical re-examination) in favor of the Insured on a policy form issued by the Society at the Register date hereof for the same plan of insurance as that upon which this policy is written. The new policy will be effective as of the Register date of this policy and will be subject to any indebtedness to the Society existing against this policy.

Asst. Registrar.

ASSIGNMENTS. No assignment of this policy shall be binding upon the Society or be deemed to be in force unless in writing and until filed at its Home Office. The Society assumes no responsibility for the validity of any assignment.

~~**BENEFICIARY.** If there is no written assignment of this policy in force and on file with the Society or if the only assignment in force and on file is to the Society as security for an advance, the Insured may from time to time, by written notice duly filed at the Society's Home Office, change the beneficiary, but such change shall take effect only upon its endorsement on this policy by the Society.~~

If the executors or administrators of the Insured be not expressly designated as beneficiary, any part of the proceeds of this policy with respect to which there is no designated beneficiary living at the death of the Insured and no assignee entitled thereto, will be payable in a single sum to the children of the Insured who survive the Insured, in equal shares, or should none survive, then to the Insured's executors or administrators.

The Insured (or assignee if any) may, without the consent of the beneficiary, surrender, assign or pledge this policy and all rights hereunder or subject to the Society's approval, change to another form or plan of insurance. An assignment by the Insured shall operate to exclude any and all rights of any beneficiary under this policy except that upon release of all outstanding assignments or upon reassignment to the Insured all rights under this policy shall be the same as if such assignments of said policy had not been made and that if assigned or pledged as collateral only by the Insured any equity remaining at the death of the Insured shall accrue to the beneficiary ~~Insured before issue of contract~~

POLICY YEARS. The first policy year under this policy shall begin on the Register date stated on the back of this policy and the second and subsequent policy years shall begin on the respective anniversaries of the Register date.

AGE. If the age of the Insured has been misstated, any benefits accruing under this policy shall be adjusted to correspond to those which would accrue under a similar policy which the premium paid would have purchased at the Society's rates in use at the Register date hereof for the Insured's correct age. The Society will, however, admit the age of the Insured if furnished with proof thereof satisfactory to the Society, and in that event will issue to the Owner without cost a certificate evidencing such admission.

THE CONTRACT. This policy, and the application therefor, a copy of which is endorsed hereon or securely attached hereto, constitute the entire contract between the parties. All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this policy or be used in defense of a claim hereunder unless contained in the written application therefor and a copy of such application is endorsed hereon or attached hereto, when issued.

All sums payable by the Society under this policy shall be payable at its Home Office in the City of New York.

SELF-DESTRUCTION. Self-destruction sane or insane, within two years from the date of issue hereof, is a risk not assumed by the Society under this policy. In such an event the Society's liability shall be limited to the payment to the person entitled to receive the first payment on account of the proceeds of this policy of a single sum equal to the premium actually paid under this policy.

SPECIAL BENEFICIARY. If there is no written assignment of this policy in force and on file with the Society or if the only assignment in force and on file is to the Society as security for an advance, the Owner may while this policy is in force designate a special beneficiary or beneficiaries who shall be entitled to receive the net sum due upon the death of the Insured and may from time to time prior to the death of the Insured change such beneficiary or beneficiaries. Such designation or change of special beneficiary shall be made by written notice duly filed at the Society's Home Office, but shall take effect only upon its endorsement on this policy by the Society.

Prior to the death of the Insured, the Owner (or assignee if any) may surrender, assign or pledge this policy and all rights hereunder or, subject to the Society's approval, change to another form or plan of insurance. An assignment by the Owner shall operate to exclude any and all rights of any such special beneficiary under this policy or any other person referred to therein except that upon release of all outstanding assignments or upon reassignment to the Owner all rights under this policy shall be the same as if such assignments of said policy had not been made and that if assigned or pledged as collateral only by the Owner any equity remaining at the death of the Insured shall accrue to such special beneficiary.

PROVISIONS RELATING TO LOANS AND SURRENDER VALUES.

LOANS. The Society, at any time while this policy is in force, will advance to the Owner on proper assignment of this policy and on the sole security hereof, at 6% interest per annum payable annually on the anniversary of the Register date a sum not exceeding the cash value, at the end of the current policy year, of this policy (as shown in the following table) and of any Dividend Additions. The Society shall deduct from such advance interest thereon to the end of the current policy year and any existing indebtedness (including interest) to the Society against this policy. The payment of the proceeds of any advance shall be subject to the provision entitled "Deferment" set forth below. Interest if not paid when due shall be added to the existing loan and bear interest at the same rate. Failure to repay any advance or to pay interest thereon shall not avoid this policy unless the total indebtedness hereon shall equal or exceed the total loan value as defined in the following table, nor until thirty-one days after notice shall have been mailed to the Owner and to the assignee of record, if any, at their addresses last known to the Society.

Such advance may be repaid at any time while this policy is in force.

CASH SURRENDER VALUE. This policy, after being in force for one year, may be surrendered by the Owner within three months after any anniversary of the Register date hereof for its net cash value, which shall be the cash value as determined in accordance with the opposite table increased by the cash value of any Dividend Additions and reduced by the amount of any indebtedness (including interest) to the Society against this policy.

The payment of any cash value due under this policy shall be subject to the provision entitled "Deferment" set forth below.

BASIS OF COMPUTATION. The Reserve for which funds are to be held for the face amount of this policy shall be computed upon the American Experience Table of Mortality with interest at 3½.

The cash values shown in the opposite table are equal to the said Reserves at the end of the respective policy years stated, less a surrender charge of not more than 5% of the face amount at the end of the first policy year, of not more than 3½% of the face amount at the end of the second policy year and of not more than 2½% of the face amount from the end of the third policy year until the completion of the twentieth policy year, at which time and thereafter there is no deduction made as a surrender charge except that fractions of a dollar are not allowed.

DEFERMENT. The payment of any cash value due under this policy or the payment of the proceeds of any advance, if for a purpose other than to pay premiums on policies in the Society, may be deferred by the Society for a period not exceeding six months after receipt of application therefor.

TABLE OF LOAN AND SURRENDER VALUES
APPLICABLE WHEN THERE ARE NO DIVIDEND ADDITIONS AND NO INDEBTEDNESS AGAINST THIS POLICY.

After policy has been in force YEARS	Cash Value for Each $1000 of Face Amount.	After policy has been in force YEARS	Cash Value for Each $1000 of Face Amount.
1	$658	14	$810
2	$678	15	$818
3	$699	16	$827
4	$710	17	$836
5	$721	18	$861
6	$731	19	$868
7	$742	20	$885
8	$752	21	$893
9	$762	22	$901
10	$772	23	$909
11	$782	24	$917
12	$791	25	$924
13	$800	30	$957

The loan value is the sum which with interest to the end of the current policy year equals the cash value at the end of such year as shown in this table and of any Dividend Additions hereto.

Loan and surrender values for any years not shown in the table will be on the same basis and will be furnished on request.

S.P. LIFE

AGE 62

A16

OPTIONAL MODES OF SETTLEMENT.

The Insured may elect (with the right to revoke or to change such election before the maturity of this policy) to have the net sum due under this policy upon its maturity applied under one, or subject to the Society's approval more than one, of the following optional modes of settlement in lieu of a single sum settlement. In the absence of such an election by the Insured, the beneficiary, after the Insured's death, may so elect. The beneficiary, after the Insured's death, may designate (with the right to change such designation) a person or persons to receive any amount which in the absence of such a designation would become payable to the beneficiary's executors or administrators. Such election, revocation, designation or request for change shall be in writing and shall not take effect until filed with the Society at its Home Office and endorsed upon the policy or the supplementary contract, if any.

1. DEPOSIT OPTION: Left on deposit with the Society at interest guaranteed at the rate of 3% per annum, with such Excess Interest Dividend as may be apportioned.

2. INSTALMENT OPTION: FIXED PERIOD. Paid in a fixed number of equal annual, semi-annual, quarterly or monthly instalments as set forth in the table on the following page.

3. LIFE INCOME OPTION: Paid in equal annual, semi-annual, quarterly or monthly instalments as set forth in the table on the following page for five, ten or twenty years certain as may be elected and continuing during the remaining lifetime of the person upon whose life the income depends. The amount of such instalments shall be based on such person's sex and age at birthday nearest the due date of the first instalment.

4. INSTALMENT OPTION: FIXED AMOUNT. Paid in equal annual, semi-annual, quarterly or monthly instalments of such amount as may be agreed upon until the net sum due under this policy together with interest on the unpaid balances at the rate of 3% per annum, and such Excess Interest Dividends as may be apportioned, shall be exhausted, the final payment to be the balance then remaining with the Society. If the interest and Excess Interest Dividend for any year shall be in excess of the instalments payable in such year, then the total amount of the instalments for the subsequent year shall be increased by the amount of such excess.

EXCESS INTEREST DIVIDEND: The foregoing Options are based upon an interest earning of 3% per annum; but if in any year the Society declares that funds held under such Options shall receive interest in excess of 3% per annum, the interest under Option 1, the amount of instalment under Option 2, the amount of income during the fixed period of five, ten or twenty years under Option 3 and the funds held under Option 4, shall be increased for that year by an Excess Interest Dividend as determined and apportioned by the Society.

OPTIONAL MODES OF SETTLEMENT FOR CASH VALUE. If this policy be surrendered by the Insured for its cash value on or after the fifth anniversary of the Register date of this policy, the Insured, by written notice filed with the Society at its Home Office at the time of such surrender, may elect to have the cash value of this policy, together with any unpaid Dividend or Dividend Accumulations and the cash value of any Dividend Additions hereunder, less any indebtedness (including interest) to the Society against this policy, applied under one of the foregoing optional modes of settlement, but for the benefit of the Insured in lieu of the beneficiary. A supplementary contract evidencing such election will then be issued by the Society.

If any of said Options be elected, the Insured may nominate the person who shall receive any amount remaining unpaid at the death of the Insured, and, if there be no written assignment of the supplementary contract in force and on file with the Society, the Insured may change the nominee. If Option 1 be elected, the Insured may also elect to have any amount due under the supplementary contract at his death applied under one, or subject to the Society's approval more than one, of said Options, but for the benefit of the nominee in lieu of the beneficiary under this policy, and, provided there is no written assignment of the supplementary contract in force and on file with the Society, the Insured may change the mode of settlement so elected to any of said Options. The Insured's nominee, after the Insured's death, may designate (with the right to change such designation) a person or persons to receive any amount which in the absence of such a designation would become payable to the nominee's executors or administrators.

All nominations, designations or requests for change shall be in writing and shall not take effect until filed with the Society at its Home Office and endorsed by the Society upon the supplementary contract.

GENERAL PROVISIONS RELATING TO OPTIONAL MODES OF SETTLEMENT.

The foregoing optional modes of settlement may not be elected if at the time of such election the amount to be applied under this policy and under any other policy or policies of this Society on the life of the Insured and payable in the same manner and to the same person, shall in the aggregate be less than $1000. If the fractional year's instalments or interest payments to any payee would amount to less than $10 each, the Society reserves the right to pay at such intervals as will make the payments amount to at least $10 each.

No option of settlement elected by the Insured hereunder can be changed nor can any payment thereunder be commuted, except by the Insured's written order filed with the Society at its Home Office. If the cash value of this policy is applied under these optional modes of settlement in accordance with the foregoing provisions, the Insured may surrender the supplementary contract on or within 30 days after any interest payment due date under Option 1 or any instalment due date under Option 2, 3 or 4 for the surrender value thereof, which, computed as of such due date, shall be the amount on deposit under Option 1, the commuted value of the instalments certain (on the basis of 3% per annum compound interest) under Options 2 and 3 and the balance then remaining with the Society under Option 4. The Society reserves the right to defer the payment of any amount which after being applied under these optional modes of settlement is withdrawn upon subsequent election, for a period not exceeding six months after receipt of application therefor.

Under Options 2, 3 and 4, the first instalment will be due upon the date as of which the Option becomes operative.

If Option 3 be elected the Society will require satisfactory evidence of the age of the person upon whose life the Income depends. After the expiration of the period certain, instalments under Option 3 will continue during the lifetime of such person, terminating with the last instalment due prior to the death of such person.

The Society will make each payment under the above Options by check which will require the personal endorsement of the payee as proof of survival. If any payment depends upon the survival of any person other than the payee, evidence satisfactory to the Society of the survival of such person on the due date of such payment must be furnished.

None of the Options shall be available to an assignee. The Options shall be available only if there is a personal beneficiary, i.e., other than a corporation, firm, trustee, etc.

COPY

2,000,000

CORPORATE AND ABSOLUTE OWNER APPLICATION, PART I

TO THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

Application is hereby made for a policy for $ 75,000 with all rights vested in the Owners as named in the Special Instructions attached hereto, bearing even date of this application and in accordance therewith.

(Print) full name of Owner. If a corporation, give name of State where organized.

The policy to be on the Single Prem. Ord.Life plan, with premiums of $ 55,717.04 payable a single sum annually in advance, and with DOUBLE ACCIDENT [ ] DISABILITY BENEFIT [ ] or SPECIAL PREMIUM WAIVER [ ]

Insert "Ord. Life," "Life—5 P.," "—year End't," "Convertible," or "—year Term." Insert "annual" or "quarterly"—if necessary. Place (X) mark after benefits selected.

on the life of MARY A. BOHMEN

Insert (print) full name of person to be insured.

Who was born at Chgo.Ills. Place. County. State.

on the 14th of June, 1873, and whose insurance age at nearest birthday is therefore 58 years. Be sure to ascertain correct date of birth (day, month, year) and state correctly the age at nearest birthday.

Whose principal occupation is that of } Housewife. State nature of business in detail, firm name, and if employed, name and address of employer.

Whose other occupations are

Whose residence is No. 6817 Kenneth Ave. Chgo. Cook Ills. Street. City or Town. County. State.

Whose place of business is No. Street. City of Town. County. State.

Any Premium Notices required by law to be sent to Owner at Street. City or Town. County. State.

The Owner has a pecuniary insurable interest in the continuance of the life of the person proposed for insurance arising out of his relationship as

It is hereby agreed that any policy issued hereon shall not take effect until the first premium thereunder has been paid during the good health of the person whose life is to be insured; that no agent or other person except the President, a Vice-President, the Secretary, the Treasurer or a Registrar of the Society has power to make or modify any contract on behalf of the Society or to waive any of the Society's rights or requirements, and that no waiver shall be valid unless in writing and signed by one of the foregoing officers. All of the foregoing answers and all those contained in part II hereof are true, and are offered to the Society as an inducement to issue the policy or policies for which application is hereby made.

The foregoing application is made at our instance and request and the statements therein contained are correct.

ENTER HERE ANY SPECIAL INSTRUCTIONS: the Beneficiaries as named in Special Provision attached hereto, bearing date of this application and in accordance therewith.

Attach rider P.P. 1246.

Signature of Owner. (SGD) EDWIN J. BOHMEN.

By THEODORE G. BOHMEN

VIRGINIA E. BOHMEN

Dated at Chgo.Ills.Oct.16 19 28

I hereby apply for and consent to the insurance herein specified and certify that all the representations and statements made herein are true. Send any premium notices required by law to the Owner herein named.

(SGD) MARY A. BOHMEN

Signature of person to be insured.

Soliciting Agent only should sign here. (If two or more persons jointly assigned to solicit this application, each should sign his full name and designate his position. Initials of above are not signed. All firm names must be signed as they are.)

O-120949

AGENCY or AGENCIES.

P.P.220 C.X. 31.3. Corp. & Abs. Owner.

28

ATTACHED TO AND MADE PART OF CORPORATE AND ABSOLUTE OWNER APPLICATION, PART 1, BEARING SAME DATE.

SPECIAL PROVISIONS:

1. It is hereby specially provided that settlement of the amount becoming due by reason of the death of the Insured shall be made with the Insured's children, EDWIN J. BOSHEN, THEODORE G. BOSHEN and VIRGINIA P. BOSHEN, in equal shares, survivors or survivor, as provided in paragraph 2, should none survive, with the children of the Insured's said children, in equal shares, survivors or survivor, as provided in paragraph 3, should none survive, in a single sum with the executors or administrators of the last survivor of the Insured's said children.

2. The share becoming due to each said child of the Insured under paragraph 1 shall be left on deposit with the Society in accordance with Option 1 of the Optional Modes of Settlement during his or her lifetime, interest payable monthly, except that such child shall have the following privilege:

   (a) at any time of having such share then held under said Option 1, together with any interest accrued thereon, paid in accordance with Option 2 of the said Optional Modes of Settlement over a period of not less than TEN YEARS; or

   (b) at any time of having such share then held under said Option 1, together with any interest accrued thereon, paid as a Life Income in accordance with Option 3 of the said Optional Modes of Settlement.

3. Should any of the Insured's said children elect settlement in accordance with said Option 2 or 3 and die, subsequent to the death of the Insured, any instalments of such share under said Option 2, or any CERTAIN instalments of such share under said Option 3, as the case may be, remaining unpaid at his or her death, shall be paid as each instalment shall become due in equal shares to the survivors or survivor of the Insured's said children, should neither survive, to the children of the Insured's said children, in equal shares, survivors or survivor. Any instalments under said Option 2, or any CERTAIN instalments under said Option 3, as the case may be, remaining unpaid at the death of the last survivor of the Insured's said children and the children of the Insured's said children, subsequent to the death of the Insured, shall be commuted and paid in a single sum to such last survivor's executors or administrators.

4. In the event of the death of any of the Insured's said children, subsequent to the death of the Insured, settlement of such share then remaining under said Option 1, together with any interest accrued thereon, shall be made in equal shares, with the survivors or survivor of the Insured's said children as herein provided. Settlement of the amount then remaining under said Option 1, together with any interest accrued thereon, at the death of the last survivor of the Insured's said children, subsequent to the death of the Insured, shall be made with the children of the Insured's said

- continued -

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-2-

children, in equal shares, survivors or survivor, as provided in paragraph 3, should none survive, in a single sum with such last survivor's executors or administrators.

4. The share becoming due to each child of the Insured's said children under paragraph 1 or 2 shall be left on deposit with the Society in accordance with said Option 1 for a period not to exceed TWENTY-ONE YEARS after the death of the last survivor of the Insured and the Insured's said children, interest payable monthly, except that such child shall have the privilege upon the date on which he or she shall have attained the age of TWENTY-ONE YEARS or on any interest due date thereafter of withdrawing all of the share then held on deposit or any part thereof, but no partial withdrawal, other than a final withdrawal of any balance of the share then remaining on deposit, may be made for less than FIVE HUNDRED DOLLARS. Upon the expiration of the said period of TWENTY-ONE YEARS, such share then held under said Option 1, together with any interest accrued thereon, shall be paid in a single sum to such child.
In the event of the death of any child of the Insured's said children, subsequent to the death of the Insured and the Insured's said children, settlement of such share then remaining under said Option 1, together with any interest accrued thereon, shall be made in equal shares with the survivors or survivor of the children of the Insured's said children as herein provided. Any amount remaining under said Option 1, together with any interest accrued thereon, at the death of the last survivor of the children of the Insured's said children, subsequent to the death of the Insured and the Insured's said children, shall be paid in a single sum to such last survivor's executors or administrators.

October 14, 1935.

ATTACHED TO AND MADE PART OF CORPORATE AND ABSOLUTE OWNER APPLICATION, PART 1, BEARING SAME DATE.

SPECIAL INSTRUCTIONS:
The rights conferred upon the Owner by the terms of this policy shall be vested in the Insured's children, EDWIN J. BOHMEN, THEODORE G. BOHMEN, and VIRGINIA E. BOHMEN, jointly during their lifetime. Upon the death of any one of the Insured's said children, such rights shall be vested in the survivors of them, jointly during their lifetime, or if only one of them be surviving, such rights shall be vested in the survivor of them during his or her lifetime. Upon the death of the last survivor of the Insured's said children, such rights shall be vested in the executors or administrators of the last survivor of the Insured's said children.

Dated October 14, 1935.

TABLE OF INSTALMENTS UNDER OPTIONAL MODES OF SETTLEMENT FOR EACH $1,000 OF PROCEEDS.

The semi-annual and quarterly instalments are 50.37% and 25.28% respectively of the annual instalment under Option 2, and are less than these respective percentages under Option 3.

OPTION 2

Number of Years' Instalments	Monthly Instalment	Annual Instalment	Number of Years' Instalments	Monthly Instalment	Annual Instalment	Number of Years' Instalments	Monthly Instalment	Annual Instalment	Number of Years' Instalments	Monthly Instalment	Annual Instalment	Number of Years' Instalments	Monthly Instalment	Annual Instalment
1	$42.86	$507.39	8	$11.68	$138.30	14	$7.26	$85.94	20	$5.51	$65.25	26	$4.59	$54.30
2	21.99	343.23	9	10.53	124.69	15	6.87	81.32	21	5.32	62.98	27	4.47	52.97
3	22.06	261.19	10	9.61	113.81	16	6.53	77.29	22	5.15	60.91	28	4.37	51.74
4	17.91	211.99	11	8.86	104.92	17	6.23	73.74	23	4.99	59.04	29	4.27	50.59
5	15.14	179.22	12	8.24	97.53	18	5.96	70.59	24	4.84	57.32	30	4.18	49.53
6	13.16	155.83	13	7.71	91.29	19	5.73	67.78	25	4.71	55.75			

OPTION 3—LIFE INCOME

Age of Person upon Whose Life the Income Depends		5 Years Certain		10 Years Certain		20 Years Certain		Age of Person upon Whose Life the Income Depends		5 Years Certain		10 Years Certain		20 Years Certain	
MALE	FEMALE	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment	MALE	FEMALE	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment
..	10 and under	$3.15	$37.21	$3.14	$37.10	$3.11	$36.72	46	50	$4.92	$57.54	$4.83	$56.55	$4.47	$52.58
..	11	3.17	37.38	3.16	37.28	3.13	36.90	47	51	5.02	58.66	4.91	57.56	4.52	53.23
..	12	3.19	37.58	3.18	37.48	3.14	37.09	48	52	5.12	59.83	5.01	58.62	4.58	53.88
..	13	3.21	37.80	3.20	37.70	3.16	37.30	49	53	5.23	61.06	5.10	59.72	4.64	54.52
10 and under	14	3.23	38.05	3.22	37.94	3.18	37.52	50	54	5.34	62.35	5.20	60.87	4.69	55.19
11	15	3.25	38.31	3.24	38.20	3.20	37.76	51	55	5.46	63.71	5.30	62.07	4.75	55.86
12	16	3.27	38.59	3.26	38.47	3.22	38.00	52	56	5.58	65.13	5.41	63.30	4.80	56.50
13	17	3.30	38.88	3.29	38.74	3.24	38.25	53	57	5.72	66.62	5.52	64.59	4.86	57.15
14	18	3.32	39.15	3.31	39.02	3.26	38.50	54	58	5.85	68.19	5.64	65.93	4.91	57.78
15	19	3.35	39.43	3.33	39.28	3.29	38.75	55	59	6.00	69.84	5.76	67.31	4.96	58.41
16	20	3.37	39.71	3.36	39.56	3.31	39.01	56	60	6.15	71.57	5.88	68.74	5.01	59.02
17	21	3.40	40.01	3.38	39.86	3.33	39.28	57	61	6.31	73.38	6.01	70.22	5.06	59.61
18	22	3.42	40.32	3.41	40.16	3.35	39.56	58	62	6.48	75.28	6.14	71.75	5.11	60.18
19	23	3.45	40.64	3.43	40.48	3.38	39.85	59	63	6.65	77.28	6.28	73.32	5.15	60.72
20	24	3.48	40.98	3.46	40.80	3.41	40.15	60	64	6.84	79.38	6.42	74.94	5.19	61.24
21	25	3.51	41.32	3.49	41.15	3.43	40.46	61	65	7.03	81.58	6.56	76.59	5.23	61.73
22	26	3.54	41.69	3.52	41.50	3.46	40.79	62	66	7.24	83.88	6.71	78.29	5.27	62.18
23	27	3.57	42.07	3.56	41.88	3.49	41.12	63	67	7.45	86.30	6.86	80.02	5.31	62.61
24	28	3.61	42.47	3.59	42.26	3.52	41.47	64	68	7.67	88.83	7.01	81.78	5.34	62.99
25	29	3.64	42.88	3.62	42.67	3.55	41.83	65	69	7.91	91.48	7.16	83.57	5.36	63.35
26	30	3.68	43.31	3.66	43.09	3.58	42.20	66	70	8.15	94.25	7.31	85.38	5.39	63.66
27	31	3.72	43.76	3.70	43.52	3.61	42.58	67	71	8.41	97.13	7.47	87.19	5.41	63.94
28	32	3.76	44.23	3.74	43.98	3.65	42.98	68	72	8.68	100.17	7.62	89.01	5.43	64.19
29	33	3.80	44.72	3.78	44.46	3.68	43.40	69	73	8.95	103.33	7.77	90.83	5.45	64.40
30	34	3.85	45.24	3.82	44.96	3.72	43.82	70	74	9.24	106.61	7.93	92.68	5.46	64.58
31	35	3.89	45.77	3.87	45.47	3.76	44.26	71	75	9.55	110.02	8.07	94.41	5.47	64.73
32	36	3.94	46.33	3.91	46.01	3.80	44.72	72	76	9.86	113.56	8.23	96.15	5.48	64.86
33	37	3.99	46.92	3.96	46.58	3.84	45.19	73	77	10.18	117.23	8.36	97.84	5.49	64.96
34	38	4.05	47.53	4.01	47.16	3.88	45.67	74	78	10.52	121.02	8.49	99.48	5.50	65.04
35	39	4.10	48.17	4.07	47.78	3.92	46.17	75	79	10.86	124.93	8.62	101.05	5.50	65.10
36	40	4.16	48.84	4.12	48.42	3.97	46.69	76	80	11.21	128.94	8.75	102.54	5.50	65.10
37	41	4.22	49.54	4.18	49.09	4.01	47.22	77	81	11.57	133.06	8.86	103.95	5.50	65.10
38	42	4.29	50.27	4.24	49.78	4.06	47.76	78	82	11.94	137.26	8.96	105.27	5.50	65.10
39	43	4.35	51.04	4.30	50.52	4.11	48.32	79	83	12.31	141.53	9.06	106.48	5.50	65.10
40	44	4.42	51.84	4.37	51.26	4.16	48.89	80	84	12.68	145.86	9.15	107.60	5.50	65.10
41	45	4.50	52.69	4.44	52.05	4.21	49.48	81	85 and over	13.06	150.23	9.23	108.60	5.50	65.10
42	46	4.57	53.57	4.51	52.88	4.26	50.07	82	..	13.43	154.61	9.30	109.50	5.50	65.10
43	47	4.65	54.49	4.58	53.74	4.31	50.68	83	..	13.80	158.97	9.36	110.29	5.50	65.10
44	48	4.74	55.46	4.66	54.64	4.36	51.31	84	..	14.17	163.31	9.41	110.97	5.50	65.10
45	49	4.83	56.48	4.74	55.57	4.42	51.94	85 and over	..	14.52	167.57	9.45	111.56	5.50	65.10

Rental [illegible] of settlement

A16

IT IS NOT NECESSARY TO EMPLOY ANY PERSON, FIRM, OR CORPORATION TO COLLECT THE INSURANCE OR SECURE ANY BENEFIT UNDER THIS POLICY.

WRITE DIRECT TO THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, 393 SEVENTH AVENUE, NEW YORK, OR COMMUNICATE WITH THE NEAREST AUTHORIZED AGENT OF THE SOCIETY WHOSE DUTY IT IS TO FACILITATE ALL SETTLEMENTS WITHOUT CHARGE

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

393 SEVENTH AVE NEW YORK

CORPORATE AND ABSOLUTE OWNER FOR... SINGLE PREMIUM LIFE POLICY.

C-130949

No. 9,896,005

Owner - As stated on 2nd Page - MARY A. BOHNEN Insured

SUPPLEMENTARY CONTRACT SETTLEMENT

FACE AMOUNT $ 72,000

62

SINGLE PREMIUM $ 53,717.04

October 15, 1936.

Insurance payable at death. Single Premium. Annual Dividends.

AD 76.

Series

40 And afterwards, to wit, on the 25th day of September, 1951, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

41 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * Caption No.—Case No. 49 C 362 * *

MEMORANDUM AND ORDER

Campbell, District Judge.

Plaintiffs bring this action against the Collector of Internal Revenue for refund of an estate tax deficiency assessed against the estate of one Mary A. Bohnen, the mother of plaintiffs. The deficiency, including interest, amounts to $26,890.91.

The complaint alleges that Mary Bohnen died June 23, 1942. In October, 1935 the decedent, then 62 years of age, purchased a single premium life insurance policy in the face amount of $72,000. On the same day and in connection therewith, she purchased a life annuity contract, providing for an annual payment to her of $1618.03. The premium for the life policy was $53,717.04; and for the annuity, $22,602.96. Plaintiff also asserts, and there is no reason to doubt, that the insurance company required that the annuity contract be purchased as a condition of issuing the life policy. The life policy named the three plaintiffs as equal beneficiaries.

Decedent then and there assigned to plaintiffs equally, as a gift, all of her right, title and interest in and to the said life policy, which assignment carried with it, inter alia, the right to receive the cash surrender value of said policy, if plaintiffs so elected, and the right to receive dividends payable thereon. In 1936, the decedent filed a gift tax return, reporting gifts to plaintiffs of ⅓ interest each in said life policy.

The deficiency was assessed, and the claim for refund denied, upon the theory that the life insurance policy was in the nature of an investment as distinguished from life insurance and was, therefore, taxable in decedent's estate under Section 811(c) of the Internal Revenue Code, as a

> render the contract and obtain the surrender value thereof. The contracts designated her as the 'Owner' or 'Purchaser,' the decedent being called the 'Insured' or 'Annuitant.' In the event that the wife should predecease the decedent, the contracts provided that all of the enumerated powers were to vest in the decedent to the extent that such powers had not otherwise been exercised by the wife."

The contracts also provided that, if all the beneficiaries should predecease the decedent, the proceeds of the contract should be paid to his executors. The only mention made of the Le Gierse case is that the two contracts must be considered together and that they did not create an insurance risk. The Court then proceeded to discuss the question of whether the proceeds were includible in the gross estate, as being the subject of a transfer intended to take effect in possession or enjoyment at or after decedent's death, without further reference to Le Gierse and as a separate and distinct problem. It would seem, therefore, that the Le Gierse case is inapposite here. True, in the Goldstone case, the Court held that the proceeds of the life insurance policy should be included in the gross estate, but note the basis for the holding and the language employed:

> "The decedent, in making disposition of $25,000 of his property through these two contracts, retained a valuable interest in that amount which was not extinguished until he died. He retained not only the right to semi-annual payments under the annuity contract but also a contingent reversionary interest in the entire proceeds of both contracts. Had he survived his wife he could have exercised the attributes of ownership over the contracts, changing the beneficiaries or surrendering the contracts as he saw fit. If he had survived both his wife and his daughters the proceeds of the two contracts would automatically have been payable to his estate when he died. Thus the ultimate disposition of the proceeds of the contracts was suspended until the moment of decedent's death. Only then did the respective interests of the wife and daughters become fixed; only then were their interests freed from the contingency of the decedent's survival. His death was the decisive fact that terminated all of

his potential rights and insured the complete ripening of the wife's interests. The transfer of the proceeds of the contracts having been effectuated finally and definitely at the decedent's death, as in the Hallock case, #302(c) requires that those proceeds be included with the decedent's gross estate.

"This conclusion is unaltered by the fact that the wife had the unrestricted power during the decedent's
44 lifetime to exercise many important incidents of ownership over the contracts, including the power to terminate the decedent's reversionary interest in the proceeds. Whatever the likelihood of the exercise of this power, it is a fact that the wife did not change the beneficiaries or surrender the contracts so as to destroy decedent's reversionary interest. The string that the decedent retained over the proceeds of the contracts until the moment of his death was no less real or significant because of the wife's unused power to sever it at any time.

"The essential element in this case, therefore, is the decedent's possession of a reversionary interest at the time of his death, delaying until then the determination of the ultimate possession or enjoyment of the property. The existence of such an interest constitutes an important incident of ownership sufficient by itself to support the imposition of the estate tax. Helvering vs. Hallock, supra. The indefeasibility of that interest prior to death or the decedent's possession of other powers of ownership is unnecessary and indecisive of estate tax liability."

Consider, therefore, the facts of the present case in the light of the Goldstone decision. The decedent here retained no interest, contingent or otherwise, in the proceeds of the policies, even in the event that all the beneficiaries predeceased her. Further, the policy, in regard to ownership thereof, contained the following provision:

"Owner. The rights conferred upon the Owner by the terms of this policy shall be vested in the Insured's children, Edwin J. Bohnen, Theodore G. Bohnen and Virginia E. Bohnen, jointly during their lifetime. Upon the death of any one of the Insured's said children, such rights shall be vested in the survivors of them, jointly during their lifetime, or if only one of them be surviving, such rights shall be vested in the

survivor of them during his or her lifetime. Upon the death of the last survivor of the Insured's said children, such rights shall be vested in the executors or administrators of the last survivor of the Insured's said children.

"A person while thus vested with the rights of Owner, may, prior to the death of the Insured, exercise the rights conferred upon the Owner by the terms of this policy without the consent of the Insured or any special beneficiary."

From the foregoing, it should be clear that absolutely no reversionary interest of any type or description was retained or possessed by the decedent in the instant case. Since, therefore, that was the "essential element" in the Goldstone case, its absence here is a valid distinguishing factor. Insofar as the plaintiffs were concerned, there was no deferment of possession or enjoyment until at or after decedent's death, and hence was not within the scope of Section 811(c).

For the foregoing reasons, plaintiffs' motion for judgment on the pleadings is granted, and judgment will, therefore, enter in favor of plaintiffs. Plaintiffs are directed to prepare and submit to the Court, within 15 days hereof, a judgment proper as to form.

Campbell
Judge

September 25, 1951.

45 And afterwards on, to wit, the 30th day of October, 1951 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Motion For Entry Of Judgment in words and figures following, to wit:

46 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * Caption No.—Case No. 49 C 362 * *

MOTION FOR ENTRY OF JUDGMENT

Now come Edwin J. Bohnen, Executor of the Estate of Mary A. Bohnen, and individually, Theodore G. Bohnen, and Virginia E. Bohnen, plaintiffs, by their attorneys McDermott, Will & Emery, George S. Stansell and James A. Dunkin, pursuant to the memorandum and order entered by this court on September 25, 1951 granting plaintiffs' motion for judgment on the pleadings and directing

plaintiffs to present a judgment proper as to form, and the order entered on October 10, 1951 extending plaintiffs' time to submit a form of judgment to and including October 30, 1951, and in support of this motion for the entry of the judgment tendered to the court herewith, these plaintiffs represent to the court as follows:

1. In this action plaintiffs seek a refund of the portion of the estate tax deficiency, including interest, paid on the Estate of Mary A. Bohnen to the defendant by reason of the inclusion in said estate of the proceeds of a cer-
47 tain life insurance policy in the sum of $72,094.81. The legality of the inclusion of said proceeds in said estate was the principal issue in this cause, on which this court held for the plaintiffs in said memorandum and order of September 25, 1951.

2. Attorneys' fees and other fees and expenses incurred by these plaintiffs in connection with the prosecution of this refund claim are also legitimate deductions from the gross estate of Mary A. Bohnen, pursuant to Reg. 105, Section 81.34 of the Treasury Department and cases decided thereunder. Said fees are in the sum of $5,500.00 and said other expenses are in the sum of $64.15, for a total additional deduction from said gross estate of $5,564.15.

3. A recomputation (attached hereto as Exhibit A) of the estate tax payable on the Estate of Mary A. Bohnen, after deducting the proceeds of the life insurance policy set forth in paragraph 1 hereof, and the fees and expenses set forth in paragraph 2 hereof, results in a reduction in the estate tax payable on said estate of $21,215.30. The portion of the interest paid on said estate tax deficiency and attributable to the erroneous inclusion in said estate of the proceeds of said life insurance policy, is $1,212.17. The total refund, including overpayment of interest, therefore is $22,427.47.

4. Interest on the said sum of $22,427.47 is allowed the plaintiffs at the rate of 6% per annum from the date of payment to the defendant, to-wit September 11, 1944, except as to the sum of $12.57 which was paid on December 23, 1944, to a date not more than thirty days preceding the
48 date of the refund check, pursuant to Title 28 of the United States Code, Section 2411.

5. If defendant moves for a rehearing or takes an appeal from this judgment, plaintiffs will incur liability for additional fees and expenses, which will constitute an additional deduction from said estate. Plaintiffs therefore request the

court to retain jurisdiction of this cause for the purpose of allowing such further refund of estate tax as may result from any such additional fees and expenses incurred in connection with any further litigation concerning this refund claim.

George S. Stansell
James A. Dunkin

McDermott, Will & Emery
111 West Monroe Street
Chicago 3, Illinois
FRanklin 2-2002

49 EXHIBIT A

RECOMPUTATION OF TAX PAYABLE ON ESTATE OF MARY A. BOHNEN

	For Basic Tax	For Additional Tax
Taxable Estate:		
Net estate after exemption (per Bureau of Internal Revenue)..	$81,171.73	$141,171.73
Less: Proceeds of life insurance policy	72,094.81	72,094.81
	$ 9,076.92	$ 69,076.92
Less: Fees and expenses in prosecuting refund claim.....	5,564.15	5,564.15
Net estate adjusted.....	$ 3,512.77	$ 63,512.77
Computation of Tax:		
Gross basic tax (1%).....	$ 35.13	
Less: State inheritance tax credit (80% of $35.13).....	28.10	
Net basic tax.....		$ 7.03
Basic and additional tax on first $60,000	$ 9,500.00	
Plus 28% of $3,512.77.....	983.58	
	$10,483.58	
Less: Gross basic tax.....	35.13	
Net additional tax		10,448.45
Total tax payable.....		$ 10,455.48
Refund Due:		
Estate tax assessed per return.		$ 6,173.25
Deficiency assessed		25,497.53
		$ 31,670.78
Estate tax as above.....		$ 10,455.48
		$ 21,215.30
Interest paid on deficiency attributable to overpayment: $1,456.85 x $21,215.30 / 25,497.53		— 1,212.17
Total refund due		$ 22,427.47

50 And afterwards, to wit, on the 9th day of November, 1951, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

51 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption No.—Case No. 49 C 362 • •

JUDGMENT

This cause having come on for hearing on plaintiffs' motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, and the court having taken said motion on the briefs of the parties and, being fully advised in the premises, having entered an order on September 25, 1951 granting said motion,

It Is Therefore Ordered and Adjudged that plaintiffs have and recover of defendant the sum of $22,427.47, plus statutory interest on said sum at the rate of six per cent (6%) per annum from December 23, 1944 as to $12.57, and from September 11, 1944 as to the balance pursuant to Title 28 of the United States Code, Section 2411; and

It Is Further Ordered and Adjudged that this court retain jurisdiction of this cause for the purpose of allowing such further refund of estate tax to which plaintiffs may become entitled as a result of incurring liability for additional attorneys' fees and other expenses in connection with any rehearing or appeal from this judgment which defendant may take.

Enter:

Campbell
Judge

Dated: November 9, 1951.

52 And on the same day, to wit, the 9th day of November, 1951, there was filed in the Clerk's office of said Court a certain Government's Exhibit 1 in words and figures following, to wit:

53 GOVERNMENT'S EXHIBIT NO. 1

IT-EG-16926—1st Illinois
Estate of Mary A. Bohnen
Date of death—June 29, 1942

RECOMPUTATION OF ESTATE TAX LIABILITY IN ACCORDANCE WITH THE MEMORANDUM OF THE CHIEF COUNSEL DATED OCTOBER 31, 1951

	For Basic Tax	For Additional Tax
Net estate previously determined by the Technical Staff and reaffirmed in Bureau rejection of claim letter dated March 3, 1947	$81,171.73	$141,171.73
Adjustment pursuant to decision of District Court for the Northern District of Illinois, Eastern Division: Exclusion from gross estate of value of proceeds of life insurance policy #9,896,003	72,094.81	72,094.81
Net estate, recomputed	$ 9,076.92	$ 69,076.92
Gross basic tax	$ 90.77	
Less credit for gift tax	0.00	
Gross basic tax less gift tax credit	$ 90.77	
Less credit for State estate, inheritance, legacy or succession taxes	72.62	
Net basic tax		18.15
Total gross taxes (basic and additional)	$12,041.54	
Gross basic tax	90.77	
Gross additional tax	$11,950.77	
Less credit for gift tax	0.00	
Net additional tax		11,950.77
Total Net Tax, Recomputed		$ 11,968.92
Assessments and payments:		
Returned tax, July 1943 List, Page 105, Line 2, paid July 1, 1943		$ 6,173.25
Deficiency, October 1944 Special List, Page 191, Line 0 (paid on Sept. 11, 1944, $26,941.81)	$25,497.53	
Interest, same list (paid on Dec. 23, 1944 12.57)	1,456.85	
26,954.38	$26,954.38	26,954.38
Total		$ 33,127.63
54 2—Estate of Mary A. Bohnen		
Total (Brought forward)		$ 33,127.63
Total tax, recomputed	$11,968.92	
Interest	331.15	
Total tax and interest, recomputed		12,300.07
Overassessment and overpayment		$ 20,827.36

If the overpayment of tax in the amount shown herein is refunded, interest should be computed on $12.57 from December 23, 1944, and on the balance of $20,814.99 from September 11, 1944.

55 And afterwards, to wit, on the 12th day of December, 1951, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry, to wit:

56 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption No.—Case No. 49 C 362 • •

CERTIFICATE OF PROBABLE CAUSE

The Court having entered judgment herein in favor of the plaintiffs in the amount of $22,427.47 plus statutory interest at the rate of six per cent per annum from December 23, 1944 as to $12.57 and from September 11, 1944 as to the balance pursuant to Title 28 of the United States Code, Section 2411, and the Court finding that the recovery allowed herein against the defendant, Carter H. Harrison, is for acts done by him in his official capacity while acting as United States Collector of Internal Revenue for the First District of Illinois and is for money collected by him as internal revenue taxes and by him paid into the Treasury of the United States in the performance of his official duty, certifies that there was probable cause for the acts so done by the said Collector while acting under the directions of the Commissioner of Internal Revenue; and accordingly the Court orders and directs that execution issue under the aforesaid judgment against any individual property or estate of said defendant Collector, but that the amount so recovered by the plaintiff herein shall be paid out of the proper appropriation from the United States Treasury as provided by Section 2006 of Title 28, U.S.C. and Rule 69(n) of the Federal Rules of Civil Procedure.

Dated: Chicago, Illinois, the 12th day of December, 1951.

Enter: *Campbell*

Judge

57 And afterwards on, to wit, the 8th day of January, 1952 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Notice Of Appeal in words and figures following, to wit:

58 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption No.—Case No. 49 C 362 • •

NOTICE OF APPEAL

Notice is hereby given that the defendant above named hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment entered in the above-entitled case on November 9, 1951.

Otto Kerner, Jr.
Otto Kerner, Jr.,
United States Attorney,
Attorney for Defendant.

(Certificate of Mailing Attached Hereto):

59 United States of America }
Northern District of Illinois } ss:

• • Caption No.—Case No. 49 C 362 • •

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on January 8, 1952, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

George S. Stansell, James A. Dunkin
McDermott, Will & Emery
111 West Monroe Street
Chicago 3, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chi-

cago, Illinois, this 8th day of January, 1952.

(Seal)

Roy H. Johnson
Clerk
By Gizella Butcher
Deputy Clerk

60 And afterwards on, to wit, the 14th day of January, 1952 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Statement Of Points in words and figures following, to wit:

61 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * Caption No.—Case No. 49 C 362 * *

STATEMENT OF POINTS UPON WHICH DEFENDANT INTENDS TO RELY ON APPEAL.

1. The District Court erred in granting judgment in favor of plaintiff and in not granting judgment, as a matter of law, in favor of the defendant.
2. The District Court erred in finding and concluding, on the undisputed facts of the case, that the value of the so-called life insurance was not includible in decedent's taxable estate under Section 811(c) of the Internal Revenue Code.
3. The District Court erred in not including and holding, as a matter of law, that the retention by the decedent of a life interest in the income made the value of the investment taxable in decedent's estate under Section 811(c) of the Internal Revenue Code.
4. The District Court erred, as a matter of law, in granting plaintiff's motion for judgment on the pleadings.

Otto Kerner, Jr.
Otto Kerner, Jr.,
United States Attorney,
Attorney for Defendant.

62 State of Illinois } ss
County of Cook }

Thomas M. Lawlor, being first duly sworn, on oath deposes and says that he is employed as Clerk to the United

States Attorney for the Northern District of Illinois, at Chicago, Illinois; that on January 15th, 1952, he mailed a copy of the foregoing Statement of Points Upon which Defendant Intends to Rely on Appeal to Messrs. McDermott, Will & Emery, 111 West Monroe Street, Chicago, Illinois, attorneys for the plaintiffs herein.

Thomas M. Lawlor

Subscribed and sworn to before
me this 15th day of January,
A. D. 1952.
(Seal)

Anna L. Minahan
Notary Public.

63 And on the same day, to wit, the 14th day of January, 1952 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Designation of Contents of Record on Appeal in words and figures following to wit:

64 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * Caption No.—Case No. 49 C 362 * *

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

The defendant herein hereby designates the following portions of the record to be contained in the record on appeal in the above-entitled case:

1. Complaint filed March 1, 1949.
2. Answer of defendant filed June 9, 1949.
3. Motion of plaintiff for judgment on the pleadings, filed October 9, 1950.
4. Order on motion for judgment on the pleadings, entered October 9, 1950.
5. Annuity Policy and Life Insurance Policy issued by Equitable Life Assurance Society of United States, filed by plaintiffs on August 22, 1951, pursuant to rule on plaintiffs entered on August 15, 1951.
6. Memorandum and Order of Court entered on September 25, 1951.

7. Motion for entry of judgment, *dated October 30, 1951.*
8. Judgment entered November 9, 1951.
9. Government's Exhibit filed November 9, 1951.
10. Certificate of Probable Cause filed December 12, 1951.
11. Notice of Appeal filed January 8, 1952.

65 12. Statement of Points Upon which Defendant Intends to Rely on Appeal, filed January 15, 1952.

13. This Designation.

Otto Kerner, Jr.
Otto Kerner, Jr.,
United States Attorney,
Attorney for Defendant.

State of Illinois }
County of Cook } ss

Thomas M. Lawlor, being first duly sworn, on oath deposes and says that he is employed as Clerk to the United States Attorney for the Northern District of Illinois, at Chicago, Illinois; that on January ...., 1952, he mailed a copy of the foregoing Designation of Contents of Record on Appeal to Messrs. McDermott, Will & Emery, 111 West Monroe Street, Chicago, Illinois, attorneys for the plaintiffs herein.

Thomas M. Lawlor

Subscribed and sworn to before
me this 15th day of January,
A. D. 1952.
(Seal)

Anna L. Minahan
Notary Public

66 And afterwards on, to wit, the 7th day of February, 1952 came the Appellees by their attorneys and filed in the Clerk's Office of said Court their certain Information Required By Rule 10(c) of the United States Court of Appeals, for the Seventh Circuit in words and figures following, to wit:

67 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption No.—Case No. 49 C 362 • •

INFORMATION REQUIRED BL RULE 10(c) OF COURT OF APPEALS FOR THE SEVENTH CIRCUIT

1. The appellees in this case are Edwin J. Bohnen, Executor of the Estate of Mary A. Bohnen, and individually; Theodore G. Bohnen, and Virginia E. Bohnen.

2. The attorneys for the appellees are William M. Emery, George S. Stansell and James A. Dunkin, 111 West Monroe Street, Chicago 3, Illinois.

Wm. M. Emery
George S. Stansell
James A. Dunkin
Attorneys for Appellees

McDermott, Will & Emery
111 West Monroe Street
Chicago 3, Illinois
FRanklin 2-2002

68 And on the same day, to wit, the 7th day of February, 1952 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation in words and figures following, to wit:

69 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption No.—Case No. 49 C 362 • •

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the following original documents be certified and forwarded by the Clerk of this Court to the United States Court of Appeals for the Seventh Circuit in connection with the appeal in the above-entitled case in lieu of copies thereof:

1. Annuity Policy and Life Insurance Policy issued by Equitable Life Assurance Society of United States, filed by plaintiffs on August 22, 1951, pursuant to rule on plaintiffs entered on August 15, 1951.

2. Government's Exhibit No. 1, filed November 9, 1951.

Otto Kerner, Jr.
Otto Kerner, Jr.,
United States Attorney,
Attorney for Defendant.
McDermott, Will & Emery
By James A. Dunkin
Attorneys for Plaintiffs.

70 And on the same day, to wit, on the 7th day of February, 1952, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry, to wit:

71 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption No.—Case No. 49 C 362 • •

ORDER

Pursuant to stipulation and agreement by the parties hereto

It Is Hereby Ordered that the following original documents be certified and forwarded by the Clerk of this Court to the United States Court of Appeals for the Seventh Circuit in connection with the appeal of the above-entitled case, in lieu of copies thereof:

1. Annuity Policy and Life Insurance Policy issued by Equitable Life Assurance Society of United States, filed by plaintiffs on August 22, 1951, pursuant to rule on plaintiffs entered on August 15, 1951.
2. Government's Exhibit No. 1, filed November 9, 1951.

Enter:

Campbell
Judge.

Dated: February 7, 1952.

72 United States of America }
Northern District of Illinois } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled: Edwin J. Bohnen, Executor of the Estate of Mary A. Bohnen, and individually; Theodore G. Bohnen and Virginia Bohnen, Plaintiffs, Vs. Carter H. Harrison, Individually and as collector of Internal Revenue, Defendant, No. 49 C 362, as the same appear from the original records and files thereof, now remaining among the records of the said Court in my office, except the Original Annuity Policy and Life Insurance Policy issued by Equitable Life Assurance Society of United States and The Government's Exhibit 1, which are incorporated herein by direction of this court upon Stipulation of the parties herein.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 8th day of February, 1952.

Roy H. Johnson
Clerk

By Gizella Butcher
Deputy Clerk

(Seal)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO 10, ILLINOIS

I, KENNETH J. CARRICK, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, filed on the twenty-first day of April, 1952, in

Cause No. 10562

EDWIN J. BOHNEN, etc., et al., *Plaintiffs-Appellees*

vs.

CARTER H. HARRISON, etc., *Defendant-Appellant*

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 30th., day of December A. D. 1952.

KENNETH J. CARRICK
Clerk of the United States Court of Appeals for the Seventh Circuit.

SEAL

At a regular term of the United States Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the seventh day of October, in the year of our Lord one thousand nine hundred and fifty-two and of our Independence the one hundred and seventy-seventh.

No. 10562

EDWIN J. BOHNEN, Executor of the Estate of MARY A. BOHNEN, and individually; THEODORE G. BOHNEN and VIRGINIA E. BOHNEN, *Plaintiffs-Appellees*

vs.

CARTER H. HARRISON, individually and as Collector of Internal Revenue, *Defendant-Appellant*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

And afterwards, to-wit, on the 29th day of October, 1952, there was filed in the office of the Clerk of this Court the Opinion of the Court which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

OCTOBER TERM AND SESSION, 1952.

No. 10562.

EDWIN J. BOHNEN, Executor of the Estate of MARY A. BOHNEN, and individually; THEODORE G. BOHNEN and VIRGINIA E. BOHNEN, *Plaintiffs-Appellees,*

vs.

CARTER H. HARRISON, individually and as Collector of Internal Revenue, *Defendant-Appellant.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

October 29, 1952.

Before DUFFY, LINDLEY and SWAIM, *Circuit Judges.*

LINDLEY, *Circuit Judge.* The Collector of Internal Revenue, defendant in the suit below, appeals from a judgment of the District Court granting the taxpayers' motion for judgment on the pleadings in an action to recover overpayment of estate taxes. The controlling facts, a clear analysis of the issues and an adequate exposition of the pertinent law appear in Judge Campbell's decision in *In re Bohnen,* 100 F. Supp. 118. However, because there are two decisions to the contrary, one of which was announced after the judgment below was entered, it may well be advisable, we think, to add our additional thought upon the questions presented.

The decedent bought two insurance contracts. One, an annuity policy, recited that, in consideration of the payment of a premium of $22,602.96, the insurance company would pay Mrs. Bohnen, until the date of her death, a fixed annuity of $1,618.03 annually. In the other, a life insurance policy, the company agreed, in consideration of the payment of a single premium of $53,717.04, to pay, upon receipt of due proof of the death of the insured, the sum of $72,000. Neither contract contains any reference to the other. The promise to pay the annuities was made in considera-

tion of one thing only, the payment of $22,602.96, and the agreement to pay the life insurance, upon the sole consideration of the payment of the single premium of $53,717.04.

Though the Supreme Court has decided that such an arrangement is in the nature of a single investment program and, therefore, not within the definition of insurance mentioned in the former act, $40,000 of which was then allowed to be deducted from the gross estate of a decedent, it does not follow that this investment program, made up of the two contracts, was indivisible. On the one hand, it is obvious that for the consideration of some $22,000 a fixed annuity of $1600 was bought and that, on the other, in consideration of the sum of some $53,000 advanced, the company agreed to pay, at the insured's death a fixed sum of $72,000. The annuities were not based upon and in no wise dependent upon any consideration given for the life policy. The money to be paid under the life contract was in no wise based or dependent upon the sum advanced to secure the annuities. They constituted independent units, two pieces of property. Consequently, when the insured immediately transferred and assigned all of her right, title and interest of every character in and to the policy of insurance, that unit of her estate passed to the assignees, and was no longer her property. It could, therefore, under no conception, constitute a part of her taxable estate when she died thereafter.

But, says the Collector, it is undisputed that the life policy would not have issued if the decedent had not also bought the annuity policy. This fact, we think, is without legal significance, for, as we have said, the decedent purchased two pieces of property, paying for one, which she retained, $22,000. For the other, the contract to pay $72,000 upon her death, she paid $53,000. The second agreement she immediately transferred by way of gift to her three children, making a gift tax return and paying the tax due thereon. She retained no interest in the life contract; thereafter, she no longer had any dominion over it. She did nothing to bring herself within the transfers made taxable by the Internal Revenue Code, either by making a transfer in contemplation of death or by retention of any interest or possibility of reverter.

The District Court discussed the case of *Burr* v. *Commissioner*, 156 F. 2d 871 (CA-2) and we need add little to its exposition. In that case the court considered a state of facts similar to that confronting us here to be within the doctrine of *Helvering* v. *LeGierse*, 312 U. S. 531. But the latter opinion decided only that the contracts, read together, constituted not insurance but an investment program. There, the life insurance policy had not been assigned. In the *Burr* case, the policy had been transferred, but the court seemed to think that that made no difference. In our opinion, in

the *Burr* case, the court went far beyond the narrow holding of the *LeGierse* case, where ownership of the life policy was retained by the decedent until the time of her death. In the *LeGierse* case the court could not well have taken any position other than the one it did take, it seems to us, for the policy-holder retained the insurance policy and all interest in and control over it until his death. Only then did it become due and payable, as a part of his estate.

In the *Burr* case the court said that the insured in "assigning the policies, was, in effect transferring a remainder while retaining a life interest or * * * retaining the enjoyment of the right of the income from the property." This is certainly not true of the present case, for here the insured retained no interest whatever in the insurance policy or in the income therefrom.

In *Conway* v. *Glenn*, 193 F. 2d 965 (CA-6), decided subsequently to the entry of the judgment here, the court followed the reasoning of *Burr* v. *Comr., supra*, attributing to the *LeGierse* decision controlling effect even where the policy is assigned. As we read the *LeGierse* opinion, the Supreme Court said nothing in it to impel the conclusion that, after complete assignment of the life insurance policy, the decedent retained any interest therein.

That the Supreme Court did not intend to decide that a previously assigned policy could properly be included in a decedent's estate at his death is apparent from its language in *Goldstone* v. *United States*, 325 U. S. 687 at 693 as follows: "In our view of the case we need not consider the alternative argument urged by the United States to the effect that the specific amendments to Section 302 (c) are also applicable since the decedent actually received an annual return from the contracts for a period which did not in fact end before his death." In other words, the specific question involved in this case was, in the *Goldstone* case, left undecided.

It is contended that the annuity payments constituted income from the life policy. It would seem that to state the proposition is to demonstrate its fallacy. The annuities were bought and paid for in the annuity contract, when the insured paid in $22,000. None of this came out of the life insurance premium. The life policy was fully paid for by the $53,000 advanced for it; no part of it contributed in any way to the annuities. If the assignees had cashed the life policy, as they had a right to do, the insured would have still been entitled to receive the annuities. The assignees were in truth, not by any fiction the absolute owners of the life policy, whereas the decedent kept for herself the annuity contract.

The judgment is affirmed.

DUFFY, *C.J.*, dissenting. In 1935, when decedent was 62 years of age, she purchased a life insurance policy in the face amount of $72,000, paying a single premium of $53,717.04. A physical examination of decedent was not required. On the same date and as a part of the same transaction she purchased an annuity contract for a single premium of $22,602.96, which provided for annual payments to her until her death of $1,618.03. The insurance company required that the annuity contract be purchased as a condition of issuing the life insurance policy to her.

The majority opinion points out that the contracts were separate, and that neither contained a reference to the other, and states that they constituted two independent pieces of property. While admitting that the United States Supreme Court in *Helvering* v. *Le Gierse, et al.*, 312 U. S. 531, held that a similar transaction to that in the case at bar was a single investment program, the majority states, "• • • it does not follow that this investment program, made up of the two contracts, was indivisible." It further states that the fact that the life insurance policy would not have been issued if decedent had not bought the annuity policy is without legal significance.

In reaching its conclusion, I think the majority gives only lip service to the decision of the Supreme Court in *Le Gierse*. In that case the life insurance policy, in standard form, containing the usual provisions including those for assignment or surrender, was issued to a woman 80 years of age, without physical examination, for a single premium less than the face of the policy. The company also issued an annuity policy for another premium, calling for annual payments to her until her death. The Supreme Court held that although both policies were on the face separate contracts, neither referring to the other, they must be considered together; that in case of a premature death, the gain to the insurance company on one policy would neutralize its loss under the other; and that there was in fact no insurance risk. The issue in that case, as stated by the court (p. 537), was: "The ultimate question is whether the 'insurance' proceeds may be included in decedent's gross estate," the statute at that time providing that insurance in excess of $40,000 was to be considered as a part of such estate. And the court ruled (p. 540): "The two contracts must be considered together. To say they are distinct transactions is to ignore actuality, for it is conceded on all sides and was found as a fact by the Board of Tax Appeals that the 'insurance' policy would not have been issued without the annuity contract. Failure, even studious failure, in one contract to refer to the other cannot be controlling."

In my opinion the majority refuses to accept the rationale on which the Supreme Court decided *Helvering* v. *Le Gierse, et al.*,

supra, and the companion cases of *Estate of Keller, et al.* v. *Commissioner*, 312 U. S. 543, and *Tyler* v. *Helvering*, 312 U. S. 657. While, as pointed out, the ultimate issue in the *Le Gierse* case was different than in the case at bar, the cases are alike in that in each a life insurance policy and an annuity contract were issued to the decedent as separate contracts, and in each the life insurance policy was issued without any medical examination and would not have been issued except in conjunction with the purchase of the annuity contract. In the case at bar the effect of the combination of contracts is that decedent invested a sum of money with respect to which she reserved the right to the income for her life, and transferred to her children, as the owners of the insurance policy, the right to receive the corpus at her death. In my opinion such a transfer is squarely within the provisions of Sec. 811 (c) (1)(B), Internal Revenue Code, and the insurance proceeds should be included in the taxable gross estate.

Except for the decision by the learned district judge who sat in this case, all cases on this point have been decided contrary to the holding of the majority herein. I think that the decision of the Second Circuit in *Burr, et al.* v. *Commissioner*, 156 F. 2d 871, certiorari denied 329 U. S. 785, and the decision of the Board of Tax Appeals in *Estate of Cora C. Reynolds, et al.* v. *Commissioner of Internal Revenue*, 45 B.T.A. 44, were correctly decided. In addition, the attention of the Sixth Circuit was particularly directed to the decision of the trial court in this case, and such view was rejected by that court in *Conway* v. *Glenn*, 193 F. 2d 965.

Feeling that the decision of the district court should be reversed, I must respectfully dissent.

A true Copy:

Teste:

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Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on the same day, to-wit, on the 29th day of October, 1952, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO 10, ILLINOIS

Wednesday, October 29, 1952

Before

HON. F. RYAN DUFFY, Circuit Judge
HON. WALTER C. LINDLEY, Circuit Judge
HON. H. NATHAN SWAIM, Circuit Judge

No. 10562

EDWIN J. BOHNEN, etc., et al., *Plaintiffs-Appellees*

vs.

CARTER H. HARRISON, etc., *Defendant-Appellant*

Appeal from the United States District Court for the Northern District of Illinois Eastern Division

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This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO 10, ILLINOIS

I, KENNETH J. CARRICK, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the Opinion of the Court filed October 29, 1952, and the Judgment entered on the same day in

Cause No. 10562

EDWIN J. BOHNEN, etc., et al., *Plaintiffs-Appellees*

vs.

CARTER H. HARRISON, etc., *Defendant-Appellant*

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 30th., day of December A. D. 1952.

KENNETH J. CARRICK
Clerk of the United States Court of Appeals for the Seventh Circuit.

SEAL

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Supreme Court of the United States

No. 566, October Term, 1952

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

EDWIN J. BOHNEN, EXECUTOR OF THE ESTATE OF MARY A. BOHNEN, AND INDIVIDUALLY, ET AL.

Order allowing certiorari

Filed March 9, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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